

United States
Circuit Court of Appeals

For the Ninth Circuit.

WALTER B. BLISS and FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY, a
Corporation,

Appellants,

vs.

GEORGE P. SPANGLER,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Southern District of California,
Southern Division.

FILED

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No. 2370

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

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For Appellee:

RAYMOND IVES BLAKESLEE, Esq., 728-
30 California Building, Los Angeles, Cali-
fornia. [3*]

*In the United States District Court, Southern Dis-
trict of California, Southern Division.*

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS et al.,

Defendants.

Citation [on Appeal (Original)].

United States of America,—ss.

To George P. Spangler, Greeting:

You are hereby cited and admonished to be and ap-
pear at a session of the United States Circuit Court
of Appeals for the Ninth Circuit, to be held at the
city of San Francisco, in the State of California, on
the 23d day of October, A. D. 1913, pursuant to an

*Page number appearing at foot of page of original certified Record.

order allowing an appeal entered in the Clerk's office of the District Court of the United States of America, of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division, from an interlocutory judgment and decree signed, filed, entered and recorded on the 4th day of August, 1913, in that certain cause, being in equity, No. 209—Civil, wherein Walter B. Bliss and Fresno Monogram Adjustable Buckle Company are defendants and appellants, and you are complainant and appellee, to show cause, if any there be, why the interlocutory judgment and decree rendered against said appellants, in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable OLIN WELLBORN, United States District Judge for the Southern District of California, ~~of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division,~~ this 24th day of September, in the year of our Lord one thousand nine hundred and thirteen, and of our Independence the [4] one hundred and thirty-seventh.

OLIN WELLBORN,
United States District Judge for the Southern District of California.

Received copy of the foregoing citation this 24th day of September, 1913.

RAYMOND IVES BLAKESLEE,
Solicitor for Complainant Spangler. [5]

[Endorsed]: In the United States District Court, Southern District of California, Southern Division.

No. 209—Civil. George P. Spangler, Complainant,
vs. Walter B. Bliss et al., Defendants. Citation.
Filed Sep. 29, 1913. Wm. M. Van Dyke, Clerk. By
Chas. N. Williams, Deputy Clerk.

Eq. Rule Book 338. [6]

*In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.*

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS and FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY,

Defendants. [7]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY.

GEORGE P. SPANGLER,

Complainant,

vs.

FRESNO MONOGRAM ADJUSTABLE
BUCKLE COMPANY, MODERN SALES
AGENCY OF AMERICA, LIMITED, and
WALTER B. BLISS,

Defendants.

Bill of Complaint.**FOR INFRINGEMENT OF LETTERS PATENT.**

To the Honorable, the Judges of the District Court of the United States, in and for the Ninth Circuit, Southern District of California, Southern Division:

George P. Spangler, a citizen of the State of California, and resident of Los Angeles, County of Los Angeles, California, brings this his Bill of Complaint against Fresno Monogram Adjustable Buckle Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Los Angeles in said State of California, in said Southern District of California, Southern Division thereof; and Modern Sales Agency of America, Limited, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Los Angeles, in said State of California, in said Southern District of California, Southern Division thereof; and Walter B. Bliss, a citizen of the State of California, and resident of Los Angeles, County of Los Angeles, State of California, in said Southern District of California, Southern Division thereof; and thereupon, your orator complaining, shows unto your Honors:

I.

That heretofore and prior to the 5th day of May, 1910, your orator, George P. Spangler, was the original, first and sole inventor of a certain new and useful clasp or buckle, not known or [8] used by

others, before his invention or discovery thereof, or patented or described in any printed publication in the United States of America or any foreign country, before his invention or discovery thereof, or more than two (2) years prior to his application for letters patent thereon in the United States of America, and not in public use or on sale in the United States of America for more than two (2) years prior to said application for letters patent thereof, and not abandoned, and not patented in any foreign country on an application filed more than twelve (12) months prior to the filing of said application in the United States.

II.

That your orator, so being the original, sole and first inventor of said clasp or buckle, to wit, on the 5th day of May, 1910, made application in writing in due form of law to the Commissioner of Patents, in accordance with the then existing laws, in such case made and provided, and complied in all respects with the conditions and requirements of said law; that thereafter such proceedings were duly and regularly had and taken in the matter of said application, that, to wit, on the 18th day of October, 1910, letters patent of the United States, No. 972,937, were duly and regularly granted, issued, and delivered by the Government of the United States to your orator, according to law, whereby there was granted and secured to your orator, his heirs, legal representatives and assigns, for the full term of seventeen (17) years from and after said 18th day of October, 1910, the sole and exclusive right, liberty and privilege to make, use

and vend the said invention throughout the United States of America and the territories thereof; that the said letters patent were duly issued in due form of law under the seal of the United States Patent Office, and duly signed by the acting United States Commissioner of Patents, he having full authority to sign the same, all as will more fully appear from said original letters patent [9] or a duly certified copy thereof, which are ready in court to be produced by your orator; and that prior to the granting and issuance and delivery of said letters patent, all proceedings were had and taken which were required by law to be had and taken prior to issuance of letters patent for new and useful inventions.

III.

That the invention set forth, described and claimed in and by said letters patent No. 972,937, aforesaid, is of great value and has been extensively practiced by your orator; and upon each and every one of said clasps or buckles manufactured, used or sold by your orator, the word "Patented," together with the day and date of the issuance of said letters patent, to wit, October 18th, 1910, has been marked or stamped thereon or *displaced* thereon by a ticket or the like attached thereto, thereby notifying the public of the said letters patent; and that the said defendants long prior to the commencement of this suit have been notified in writing of the granting and issuance of said letters patent No. 972,937, and of the rights of your orator thereunder, and demand has been made upon said defendants to respect the said letters patent, and not to infringe thereon, but notwithstanding such

notice the defendants have continued to make, use and sell clasps or buckles embodying the said invention, as hereinafter more particularly set forth.

IV.

And your orator further shows to your Honors that the trade and public have generally respected and acquiesced in the validity and scope of said letters patent No. 972,937, and in the exclusive rights of your orator, and save and except for the infringement thereof by the defendants, as hereinafter set forth, your orator has had and enjoyed the exclusive right, liberty and privilege, since October 18th, 1910, of manufacturing, using and selling clasps or buckles, embodying and containing the invention [10] described, set forth and claimed in said letters patent No. 972,937, and but for the wrongful and infringing acts of defendants, as hereinafter set forth, your orator would now continue to enjoy the said exclusive rights and the same would be of great and incalculable benefit and advantage to your orator.

V.

And your orator further shows unto your Honors and alleges upon information and belief that notwithstanding the premises, but well knowing the same, and without the license or consent of your orator, and in violation of said letters patent, and of your orator's rights thereunder, the defendants herein, Fresno Monogram Adjustable Buckle Company, Modern Sales Agency of America, Limited, and Walter B. Bliss, as aforesaid, have, jointly, as parties participating in the manufacture, use and sale of clasps or buckles within the County of Los Angeles

and State of California, and within the Southern District of California, Southern Division, aforesaid, within the year last past and prior thereto, and elsewhere, jointly made, used, and sold, and are now jointly making, using, and selling clasps or buckles embodying, containing and embracing the invention described, claimed and patented in and by said letters patent No. 972,937, and have jointly infringed upon the exclusive rights secured to your orator by virtue of said letters patent, and jointly continue to and now are jointly infringing thereon, and that the clasps or buckles so jointly made, used and sold by the defendants were and are infringements upon said letters patent of your orator, and each of said clasps or buckles contains and has contained in it said patented invention; and that although requested so to do, the defendants have refused to cease and desist from the infringement aforesaid, and are now jointly making, using and selling clasps or buckles containing and embracing the said patented invention and jointly threaten and intend to continue so to do, and will continue so to [11] do unless restrained by this Court; and are realizing, as your orator is informed and believes, large gains, profits and advantages, the exact amount of which is unknown to your orator; and that by reason of the premises and the unlawful acts of the defendants aforesaid, your orator has suffered and is suffering great and irreparable injury and damage.

VI.

That for all the wrongs herein complained of, your orator has no plain, speedy or adequate remedy at

law, and is without remedy, save in a court of equity where matters of this kind are properly cognizable and relievable.

To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief herein prayed, and may, according to the best and utmost of their knowledge, recollection, information and belief, but not under oath (an answer under oath being hereby expressly waived), full, true and perfect answer make to all and singular the matters and things hereinabove charged, your orator prays that the defendants and each of them may be enjoined and restrained, both provisionally and perpetually, from further infringement upon said letters patent, and may be decreed to account for and pay over to your orator the gains and profits realized by the defendants from and by reason of the infringement aforesaid, together with costs of suit.

May it please your Honors to grant unto your orator a writ of injunction issued out of and under the seal of this court, provisionally and until the final hearing, enjoining and restraining said defendants, Fresno Monogram Adjustable Buckle Company, Modern Sales Agency of America, Limited, and Walter B. Bliss, their attorneys, officers, agents, workmen, and employees, from making, using and selling any clasps or buckles containing or embracing the invention patented in and by said letters patent, and that upon the final hearing of this case said provisional [12] injunction may be made final and perpetual, and that your orator may have such other and further relief as to your Honors may seem proper

and in accordance with equity and good conscience.

May it please your Honors to grant unto your orator the writ of subpoena issued out of and under the seal of this court directed to the defendants, Fresno Monogram Adjustable Buckle Company, Modern Sales Agency of America, Limited, and Walter B. Bliss, commanding them by a day certain and under a certain penalty fixed by law, to be and appear before this Honorable Court, then and there to answer this Bill of Complaint and to stand to and perform and abide by such further orders and decrees as to your Honors may seem meet in the premises.

And your orator will ever pray.

GEORGE P. SPANGLER.

RAYMOND IVES BLAKESLEE,

Solicitor and Counsel for Complainant,
728-29-30 California Bldg., Los Angeles,
Calif. [13]

State of California,
City of Los Angeles,
County of Los Angeles,—ss.

On the second day of November, 1912, before me personally appeared George P. Spangler, who being duly sworn did depose and say that he is the complainant mentioned in the foregoing Bill of Complaint; that he has read the Bill and knows the contents thereof, and that the same is true to his knowledge and belief, except in so far as matters are therein stated on information and belief, and as to those matters, he verily believes them to be true.

GEORGE P. SPANGLER.

Subscribed and sworn to before me, this 2d day of November, 1912.

[Seal]

H. H. HARRIS,

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires June, 7, 1914.

[Endorsed]: No. 209—Civil. In the United States District Court, Southern District of California, Southern Division. George P. Spangler, Complainant, vs. Fresno Monogram Adjustable Buckle Company, Modern Sales Agents of America, Ltd., and Walter B. Bliss, Defendants. In Equity. For Infringement of Letters Patent. Bill of Complaint. Filed Nov. 4, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Raymond Ives Blakeslee, Suite 728-30 California Bldg., 2nd and S. Broadway, Los Angeles, Cal., Solicitor and Counsel for Complainant. [14]

[Answer of Walter B. Bliss.]

*United States District Court, Southern District of
California, Southern Division.*

IN EQUITY.

GEORGE P. SPANGLER,

Complainant,

vs.

FRESNO MONOGRAM ADJUSTABLE
BUCKLE COMPANY, MODERN SALES
AGENCY OF AMERICA, LIMITED, and
WALTER B. BLISS,

Defendants.

The answer of Walter B. Bliss to the bill of complaint, this defendant reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, comes and answers thereto, or so much thereof as he is advised is material to be answered, says:

I.

This defendant has no knowledge or belief as to the allegations set forth in paragraph I of complainant's bill of complaint, but demands strict proof of the same.

II.

This defendant has no knowledge or belief as to the allegations set forth in paragraph II of complainant's bill of complaint, but demands strict proof of the same.

III.

This defendant has no knowledge or belief as to the allegations set forth in paragraph III of complainant's bill of complaint, but demands strict proof of the same.

IV.

This defendant has no knowledge or belief as to the allegations set forth in paragraph IV of complainant's bill of complaint, but demands strict proof of the same.

V.

This defendant denies that the defendants herein, the [15] Fresno Monogram Adjustable Buckle Company, Modern Sales Agency of America, Limited, and Walter B. Bliss, have, in violation of the letters patent, set forth and referred to in the com-

plainant's bill of complaint, or in violation of any letters patent or in violation of the rights of said complainant, jointly, as parties or separately participated in the manufacture and use and sale of clasps or buckles within the county of Los Angeles, State of California, or within any other county or State within the year last past, or within any other time or times, have jointly or separately made, used and sold, or are now jointly or separately making, using or selling clasps or buckles embodying or containing or embracing the invention described in complainant's bill of complaint and in the letters patent, to which reference therein is made. Defendant denies that the above-named defendants, jointly or separately have infringed upon the exclusive rights secured to complainant by virtue of the said letters patent. Defendant denies that the above-named defendants, jointly or separately, continue and are now infringing on the exclusive rights of the said complainant; and defendant denies that the clasps or buckles made, used and sold, jointly by the above-named defendants were or are an infringement upon the said letters patent; and defendant denies that the clasps or buckles made, used and sold jointly by the said defendants contains or has *contained it*, the patent invention covered and set forth in said letters patent No. 972,937 as issued to the complainant; and defendant denies that by reason of the manufacture, use and sale by the above-named defendants, of the clasp or buckle manufactured and sold by them, has caused the complainant to suffer or is causing said complainant to suffer any great or irreparable injury

and damage, or any injury or damage at all.

Having thus made full answer to all material matters and things contained in complainant's bill of complaint, this [16] defendant prays to be dismissed hence with his costs in this — above incurred.

WALTER B. BLISS.

NEIGHBOURS, SPROUL & HOAG,

Solicitors and Counsel for Walter B. Bliss,
Defendant,

401 Chamber of Commerce Building,
Los Angeles, California.

Service of the within answer by copy is hereby acknowledged this 3d day of January, 1913.

RAYMOND IVES BLAKESLEE,

Attorney for the Complainant.

[Endorsed]: No. 209-Civil. United States District Court, Southern District of California, Southern Division. George P. Spangler, Complainant, vs. Fresno Monogram Adjustable Buckle Co. et al., Defendants. Answer of Walter B. Bliss. Filed Jan. 3, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [17]

[Answer of Fresno Monogram Adjustable Co.]

In the United States District Court, Southern District of California, Southern Division.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS et al.,

Defendants.

Now comes the Fresno Monogram Adjustable Buckle Company substituted as defendant for the Monogram Buckle and Manufacturing Company and answering complainant's complaint denies that prior to the 5th day of May, 1910, or prior to any other day, George P. Spangler was the original or first or sole inventor of a certain new and useful clasp or buckle as set forth in paragraph 1 of the complaint. Denies that the said clasp or buckle was not known or used by others before the said alleged invention thereof by said Spangler. Denies that the said clasp or buckle was not patented or described in any printed publication in the United States of America or any foreign country. Denies that the said clasp or buckle was not in public use or on sale in the United States of America prior to the supposed invention thereof by said Spangler. Denies that on May 5, 1910, or at any other time said Spangler made application in writing in due form of law to the Commission of Patents and complied in all respects with the conditions and requirements of the law. Denies that thereafter any proceedings were duly and regularly

had in the matter of said Spangler's application so that on October 18, 1910, letters patent of the United States were duly and regularly granted, issued and delivered to said Spangler as set forth in paragraph 2 of the complaint. Denies that prior to the issuance and delivery of said alleged letters patent all proceedings were had and [18] taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

Denies that the invention set forth and claimed in said letters patent 972,937 is of great or any value or that the same has been extensively practiced by said Spangler. Denies that the buckles manufactured by said Spangler have been marked with the word "patented" with the date of said patent or by a ticket or the like attached thereto. Denies that any notice or demand has been made upon this defendant not to infringe upon said letters patent. Denies that this defendant has made or used or sold clasps or buckles embodying the invention set forth in said letters patent referred to in said bill of complaint. Denies that the public generally have respected and acquiesced in the validity and scope of said letters patent 972,937 or in the exclusive rights of said Spangler. Denies that said Spangler has had and enjoyed the exclusive right, liberty and privilege since October 18, 1910, or any other day of manufacturing or using or selling buckles described in letters patent 972,937. Denies that this defendant jointly with Walter B. Bliss, or at all, has participated in the manufacture or use or sale of clasps or buckles at

any place or at any time of clasps or buckles embodying the invention described in said letters patent 972,937, or that they are now jointly or otherwise making or using or selling buckles containing the invention described in said letters patent 972,937. Denies that any buckles made or used or sold by this defendant were or are infringements upon the letters patent set forth in the bill of complaint, or that any of said buckles contain the said patented invention. Denies that this defendant jointly or otherwise threatens or intends to continue to infringe upon the alleged rights secured to complainant by said alleged letters patent. Denies that complainant has suffered or is suffering great or irreparable injury or damage from any act of this defendant. [19]

For a further and separate defense this defendant alleges that the alleged invention described and claimed in the letters patent sued on herein or substantially the same was long prior to the supposed invention and discovery thereof by complainant described and patented in and by the following letters patent of the United States, namely: No. 132,051, issued to F. Busch, Oct. 8, 1872; No. 2,051,715, issued to E. G. Latta, July 2, 1878; No. 279,382, issued to P. Hayes June 12, 1883; No. 391,545, issued to J. T. Merritt Oct. 23, 1888; No. 492,256, issued to G. M. Aylsworth Feb. 21, 1893; No. 544, 856, issued to E. D. Koopman August 20, 1895; No. 556,413, issued to E. Graves March 17, 1896; No. 577,850, issued to M. T. Goldsmith March 2, 1897; No. 672,793, issued to C. E. Mixer April 23, 1901; No. 803,576, issued to T.

H. Fishel Nov. 7, 1905; 957,415, issued to W. M. Giffey May 10, 1910.

Defendant further answering avers that in view of the prior state of the art pertaining to clasps and buckles that there was and is no patentable invention in the said alleged clasp or buckle described in the letters patent sued on herein, but that the same or substantially the same clasp and buckle was well known in the art prior to the alleged invention thereof by complainant and that if there is anything different from what was known or discovered in said prior art it was not the result of patentable invention but was wholly the result of the ordinary skill of the ordinary mechanic.

WHEREFORE, this defendant having fully answered, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with his reasonable costs and in this behalf wrongfully sustained, and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

G. E. HARPHAM,

Solicitor for Defendant Fresno Monogram Adjustable Buckle Company and of Counsel. [20]

[Endorsed]: No. 209. Dept. ——. In the United States District Court, Southern District of California, Southern Division. George P. Spangler, Complainant, vs. Walter B. Bliss et al., Defendants. Answer of Fresno Monogram Adjustable Buckle Company. Received copy of the within answer this 10 day of February, 1913. Raymond Ives Blakeslee, Solicitor for Complainant. Filed Feb. 10, 1913.

Wm. M. Van Dyke, Clerk. By Murray C. White, Deputy Clerk. George E. Harpham, 698 Pacific Electric Building, Los Angeles, California, Solicitor for Defendant. [21]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS, FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY, and
MODERN SALES AGENCY OF AMERICA,
LIMITED,

Defendants.

Interlocutory Decree.

FOR INFRINGEMENT OF LETTERS PATENT.

This cause having come on to be heard on July 22d, 1913, upon the pleadings, proceedings and proofs herein, filed on behalf of both parties, and after hearing Raymond Ives Blakeslee, Esq., counsel for complainant, and George E. Harpham, Esq., counsel for defendants Walter B. Bliss and Fresno Monogram Adjustable Buckle Company, and the Bill herein having been taken *pro confesso* against defendant Modern Sales Agency of America, Limited, and after due proceedings had, it is, upon consideration, ordered, adjudged and decreed as follows:

I.

That letters patent of the United States of America, No. 972,937, issued to George P. Spangler, the complainant, on the 18th day of October, 1910, for clasps or buckles are good and valid in law.

II.

That said George P. Spangler was the first, true and original inventor of the invention and improvement described and claimed in said letters patent No. 972,937, and that the said invention was not known or used by others before said George P. Spangler's invention or discovery thereof, or patented or described in any printed publication in the United States of America, or any foreign country, before said George P. Spangler's [22] invention or discovery thereof, or more than two years prior to said George P. Spangler's application for letters patent thereon in the United States of America, or in public use or on sale in the United States of America for more than two years prior to said George P. Spangler's said application for letters patent therefor, and not abandoned.

III.

That the complainant, George P. Spangler, is the lawful owner of said letters patent No. 972,937, as set forth in the Bill of Complaint, and of all rights of action and claims for past infringement thereof.

IV.

That the defendants, Walter B. Bliss, Fresno Monogram Adjustable Buckle Company and Modern Sales Agency of America, Limited, have jointly infringed upon the said Letters Patent No. 972,937,

and upon the exclusive rights of the complainant under the same, by the manufacture, use and sale of clasps or buckles like Complainant's Exhibits "E" and "F," and intend and threaten to continue such infringement.

V.

That all clasps or buckles manufactured, used or sold by complainant since the issuance of said letters patents No. 972,937, and embodying or containing said patented invention claimed in said letters patent No. 972,937, have been plainly and distinctly marked by having printed on each thereof the abbreviated word "Pat," together with the words and figures "Oct. 18 -1910," thereby duly notifying the defendants, and each of them, of said letters patent No. 972,937, before the defendants commenced jointly to make, use or sell the infringing clasps or buckles, and likewise and similarly duly notified the defendants, and each of them, of complainant's rights under said letters patent No. 972,937; but defendants jointly made, used and sold the infringing clasps and buckles, knowing [23] the same were claimed by complainant to be an infringement of said letters patent, and being fully aware of said letters patent; and to that end and further the defendants and each of them were otherwise duly notified of said letters patent No. 972,937, and of complainant's right thereunder, and complainant demanded that the defendants, and each of them, cease such infringement.

VI.

That the complainant recover of the defendants and each of them the profits, gains and advantages

which the said defendants have derived, received or made, by reason of said joint infringement of said letters patent No. 972,937, and that the complainant do recover of the said defendants, and each of them, any and all damages which the complainant has sustained or which he shall sustain by reason of said joint infringement by said defendants.

VII.

And it is hereby referred to Lynn Helm, Esq., as the Master of this Court, who is appointed *pro hac vice*, to take and state the account of said gains, profits and advantages, and to assess such damages and to report thereon with all convenient speed; and the defendants Walter B. Bliss, Fresno Monogram Adjustable Buckle Company and Modern Sales Agency of America, Limited, their attorneys, clerks, officers, employees, servants, agents, associates and workmen, are hereby directed and required to attend before said Master from time to time, as required, and to produce before him *to* such books, papers, records, vouchers and documents, and to submit to such oral examination, as the master may require.

VIII.

That a perpetual injunction issue out of and under the seal of this Court, directed to the said defendants Walter B. Bliss, Fresno Monogram Adjustable Buckle Company and Modern Sales Agency of America, Limited, their attorneys, officers, agents, servants, associates, clerks and workmen, enjoining and restraining them and each of them from directly or indirectly making or causing to be [24] made using or causing to be used, or vending to others to

be used, in any manner, any article, device or clasp or buckle, containing, embodying or embracing the said invention or improvement granted and covered and claimed by the said letters patent, No. 972,937, or any clasp or buckle capable of being combined or adapted to be used in infringement of said letters patent, or infringing upon or violating the said letters patent in any manner whatsoever.

IX.

That the complainant do recover of the defendants, and each of them, his costs and disbursements of this suit to be taxed, and that the question of increase of damages and further questions be reserved until the coming in of the master's report.

Dated, Los Angeles, California, August 4th, 1913.

Costs Taxed at \$153.40.

By the Court.

OLIN WELLBORN,

District Judge.

Decree entered and recorded August 4th, 1913.

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk.

[Endorsed]: In the United States District Court, Southern District of California, Southern Division. In Equity for Infringements of Letters Patent. No. 209—Civil. George P. Spangler, Complainant, vs. Walter B. Bliss, Fresno Monogram Adjustable Buckle Company, and Modern Sales Agency of America, Limited, Defendants. Interlocutory Decree. Filed August 4, 1913. Wm. M. Van Dyke,

Clerk. By C. E. Scott, Deputy Clerk. Raymond Ives Blakeslee, 728-29-30 California Bldg., Los Angeles, California, Solicitor and Counsel for Complainant. [25]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS, FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY, and
MODERN SALES AGENCY OF AMERICA,
LIMITED,

Defendants.

Abstract of Testimony.

Be it remembered that the evidence on behalf of complainant was taken before V. J. Cobb, a Notary Public of Los Angeles County, California, pursuant to notice and stipulation of counsel for the respective parties, commencing at 2 o'clock P. M., March 24th, 1913, and there were present Raymond Ives Blakeslee, Solicitor for Complainant, Charles W. Hoag, Solicitor for Defendant Bliss, and G. E. Harpham, Solicitor for Defendant Fresno Monogram Adjustable Buckle Company, and the following proceedings were had, each witness being first duly sworn before his examination began.

Solicitors for the respective parties stipulated that uncertified copies of U. S. Letters Patent might be offered and received on behalf of all parties with the same force and effect as if duly certified, subject to all objections except that such patents were not originals or certified copies.

**[Testimony of George P. Spangler, the Complainant,
on His Own Behalf.]**

GEORGE P. SPANGLER, complainant, was called as a witness on his own behalf and in response to questions by Mr. Blakeslee testified as follows:

My name is George P. Spangler. I am 47 years old and reside at Los Angeles, Cal. I am by occupation a leather workman and belt manufacturer and have been engaged in that [26] line of work 25 years. I am the complainant in this suit. I now produce a copy of the letters patent sued on herein. Said letters are offered in evidence and marked "Complainant's Exhibit 'A,' Spangler Patent." I am the sole owner of said letters patent. Prior to commencing this suit I sent a letter through the U. S. mail by registered letter to the Modern Sales Agency of America. This is a copy of the letter I sent. Said copy was offered in evidence and marked "Exhibit 'B'; letter of notification." This letter was sent to 114 East 9th St., Los Angeles, Cal. I received a return register receipt which showed the receipt of the letter on _____ by the Modern Sales Agency of America by E. R. Fries.

I commenced to make the buckles described in my letters patent about April 1st, 1910, and I first sold such buckles about June, 1910. I now produce a belt

(Testimony of George P. Spangler.)

buckle with the transverse bar broken out centrally. Here is such a buckle. I made it. The buckle is offered in evidence and marked Complainant's Exhibit "D," altered Spangler Buckle.

The first buckles like Exhibit "C" I made in the latter part of May, 1910, and put them on the market in June, 1910. I sold them at 221 West Second Street, Los Angeles, Cal. I have continued to sell them since. There was an increased demand for them for a year and a half after I first put them on the market. My average sales from the first of the year 1912 to the present date, March 22, per month has been $46\frac{1}{2}$ per cent less than they were for the previous 18 months.

This is a buckle that I bought August 2, 1912, at F. B. Silverwood's. I purchased another one similar to the buckle just produced on March 18, 1913, at F. B. Silverwood's Spring Street Store, Los Angeles, Cal.

Mr. BLAKESLEE.—I will ask defendants' counsel if they are prepared to admit that these buckles just produced by the witness are specimens of buckles which at times have been manufactured and sold by the defendants or either of them.

Mr. HARPAM.—We will admit that these buckles are specimens of buckles which were at one time manufactured and sold by the defendant, Fresno Monogram Adjustable Buckle Company, in Los Angeles County, California, since October 18, 1910, and prior to the filing of this suit, but state that they are not now being manufactured.

(Testimony of George P. Spangler.)

(The two belts and buckles are marked as "Complainant's Exhibit 'E,' Defendants' Buckle," and "Complainant's Exhibit 'F,' Defendants' Buckle," respectively.)

Prior to the purchase of these buckles I had seen others like them in the market. Prior to the time I placed my buckle or buckles like "Complainant's Exhibit 'C' " on the market I had never seen a buckle having a plate or shield outwardly exposed or presented with the two ends of the strap or belt engaged together behind [29] the plate or shield by means of a member on one end of the belt engaging with a member adjustable connected with the other end of the belt, such engagement being between a slotted tongue on one belt-end and means connected with the plate and permitting adjustment between the plate and the other end of the belt.

I first met Mr. Bliss between the 20th and 27th of April, 1910.

I went up to Mr. Bliss to have him manufacture some buckles for me as he is a manufacturing jeweler, for samples from the patterns and models that I furnished him. I think this small paper device I have here was mentioned incidentally. I told him that it wasn't very good because it didn't curve to the body; it was rather cumbersome and I think he got a little huffy about that; said it was made exactly according to pattern, so we let it go at that. I had him make twenty buckles constructed the same as Complainant's Exhibit "C," except in reference to width, one size being a little wider than the other and some little

(Testimony of George P. Spangler.)

difference in finish and decoration. I paid for the buckles. I met Mr. Bliss frequently after that. We had many discussions or conversations pertaining to the manufacture of these buckles. He was very much impressed with this buckle Exhibit "C." He says, "A fine thing; I could sell those like hot cakes; college boys will be crazy for that." Another time he says that we have been working for years trying to get up a buckle, but that is the finest thing I ever saw. Then after a certain length of time he said he had a similar idea. I showed him my patent application on it and from that time on Mr. Bliss was very different, didn't work cheerfully helping me with the buckle from that time on. He says, "You mean to tell me you can get a patent on that?" I says, "I certainly applied for a patent on that." He never mentioned the fact that he had ever seen anything similar at all. I endeavored to sell buckles like Exhibit "C." Approximately the total sale of these buckles from the beginning to the present time is somewhere near 700. The selling price of these buckles has not always been the same. I [30] reduced the price on them. I made several little reductions that I have no recollection of, but the first of the year 1912, I made a 16 $\frac{1}{4}$ per cent reduction on them because my sales were getting less and I did it as an inducement to induce people to buy my buckles.

(The small paper device in two parts to which witness has referred is offered in evidence as "Complainant's Exhibit 'H,' Paper Model.")

I have seen buckles like Complainant's Exhibits

(Testimony of George P. Spangler.)

“E” and “F” on sale at approximately every gent’s furnishing store that I have seen lately in Los Angeles. I have used one of the buckles like Complainant’s Exhibit “C” with belt attached thereto. It is the most pleasant feeling belt I ever wore; the easiest to manipulate of any belt I ever wore. I am partly in business for myself and partly not. I am employed by Arnold Ross in Los Angeles. The employment is regulated to suit my pleasure. I give him as much of my time as suits my pleasure; the rest is my own. I have not any considerable capital to employ in the manufacture and introduction of these buckles. I had no inclination to put any great amount of money or capital or induce anyone else to put capital into my patent as long as the others were on the market as they had already the market covered and it would be an uphill fight to crowd them out.

Mr. Walter B. Bliss made something over seventy buckles for me in all, I guess. About November 1st, 1910, he notified me he couldn’t make any more for me, but he did make some more by having them ordered through Mr. Ross. He made some of these buckles after the issuance of the patent in suit.

On cross-examination the witness was interrogated by Mr. Harpham and testified as follows:

If you remove the interlocking element of my buckle which has the hook on the end of it there surely is nothing to hold the shield to the strap. The whole of that interlocking element is [31] necessary in a construction of that kind. The hook on the end of it is necessary as a holding device to hold the strap to the shell. The pin of it can extend up

(Testimony of George P. Spangler.)

through and be used for the same purpose, if there is any object in doing so, any desire to shorten or simplify it a little. The hook could be done away with—that whole plate on that pivot could be done away with and the hinge itself; a piece of wire with a few bent places in it would answer the same purpose. There could be a little stud sticking up there. The stud on this hooked interlocking element is naturally a necessary part of that in order to hold the belt.

Anything playing loose which would be without that stud necessarily naturally wouldn't work at all, that is, part of it is the holding device for the belt. That stud is the holding part for the belt, and the hook is the interlocking element for what engages the other interlocking element. It is not necessary—does not have to be that shape at all; it can be various shapes. It could be one continuous piece of metal. I never saw one that had interlocking elements that connected the ends of the belt together back of the shield. I had been in a position to see everything that was in that line, as that was my line of business for the last twenty-five years, and I have never seen anything similar whatever.

On redirect examination by Mr. Blakeslee the witness testified:

The service of the stud or projection or pin at the inner portion of the swinging member connected with the plate is it holds the belt from slipping, from allowing the buckle to slide, and is connected with the shield by a hinge or knuckle. The swinging member is connected with the buckle by the same hinge.

[Testimony of Paul W. Gilbert, for Complainant.]

PAUL W. GILBERT, produced as a witness on behalf of the complainant, was examined by Mr. Blakeslee and testified as follows:

My name is Paul W. Gilbert; I am 22 years old and at the present time am engaged in the grocery business. I reside at Los Angeles, California, and am acquainted with Mr. Spangler, the complainant. I have known him a little over eight years. I [32] first saw a buckle like Exhibit "C" about three or three and a half years ago. I sold a number of these buckles for Mr. Spangler at retail, with the Arnold Ross Trunk Company of 221 West 2d St., Los Angeles, Cal.

I know the defendant Walter B. Bliss. I first met him about five years ago. The first time that I went up to Mr. Bliss was to get him to make that shell buckle that Mr. Spangler and I got up together. The paper model, Complainant's Exhibit "H," is the shell buckle that I refer to. I told him to make a buckle like that for my personal use. He made one and I wore it. That was before I saw Exhibit "C." Right after that Mr. Spangler showed me a buckle like Complainant's Exhibit "C" and asked me if I thought it would sell and I said it certainly was very nice. Mr. Spangler had Mr. Bliss make the first ones for him. I got Mr. Bliss to make up samples for Mr. Spangler. Mr. Bliss seemed to think the buckles like Complainant's Exhibit "C" were very nice. I remember talking the buckle over with him and he seemed to think it very nice; in fact, being in-

(Testimony of Paul W. Gilbert.)

terested in it I would naturally ask him what he thought about it. He said it was very nice. He afterwards told me he had got out a buckle like that before. He said he had one like that himself. This was long after the buckle had been on the market. I should say about three months. At that time he did not have such buckle, but a little while afterward he did. The buckle that Mr. Bliss showed me at the time referred to is like this one, but this is somewhat perfected.

(Witness picks up "Complainant's Exhibit 'E,' Defendants' Buckle.")

The difference in that buckle he showed me was that the tongue slipped in between the two pieces of leather and were fastened on with glove-buttons. This part here was eliminated. (Witness points to the short ear projecting over the end of the strap behind the plate and between the two cross bars.) I have [33] seen them on sale in a number of stores of the improved type, in Los Angeles. Mr. Bliss told me he was going to put them on the market. At one time he wondered whether it infringed or not; of course I didn't know anything about it. I said of course Mr. Spangler is the originator of that particular patent. Then he wondered what he could buy Spangler's patent for, so I went to him and asked him about it, asked him what he would do. Nothing was said for some little time. He said something about selling it out to a company. I said that was rather an unfair thing to do; he ought to work Spangler's patent in with his in the company. He said that if

(Testimony of Paul W. Gilbert.)

I didn't say anything about it till after he got a company and then he would work in Mr. Spangler's patent. After the time Mr. Bliss first showed me the buckle which you have compared with Complainant's Exhibit "E" he did not say anything more only he was wondering whether it infringed or not—after he made up quite a few of these buckles he asked me if I thought I would buy belts from Spangler to help put his buckles on the market.

Approximately I should think I sold for Mr. Spangler pretty close to one thousand buckles like Exhibit "C." I have used one of these buckles and it is very satisfactory.

[Testimony of Herman A. Ross, for Complainant.]

HERMAN A. ROSS, a witness produced on behalf of complainant, was examined by Mr. Blakeslee and testified as follows:

My name is Herman A. Ross. I am a merchant by trade and live at the Shrine Apartments, Los Angeles, California. My age is 42 years. My line of business is trunk, baggage and suitcase line. I know complainant. He is an employee of mine and I sell his buckles and belts as much as possible. Complainant's Exhibit "C" is the buckle referred to. I first commenced selling such buckles two and one-half or three years ago and have sold them ever since. We used to get \$2.00 for a buckle like that; now we get \$1.15 for the buckle. The price changed about Sept. last fall. Prior to handling Exhibit "C" I have seen buckles with a plate [34] that is snapped over but nothing that is slid underneath that

(Testimony of Herman A. Ross.)

and fastened in the way that Exhibit "C" is fastened, that is slid behind the plate. I have been handling carved leather belts from 1892 to about seven or eight years ago and then dropped out of the carved leather belt line and went more into suitcases. The business of selling the Spangler buckles and belts seemed to drop off a little about a year ago this present spring. I don't know just what the cause was, though. The purchasing public seemed to like the buckle but most of them objected to the price. That was the drawback.

**[Testimony of George Sidney Binckley, for
Complainant.]**

GEORGE SIDNEY BINCKLEY, produced as a witness on behalf of the complainant, being examined by Mr. Blakeslee, testified as follows:

My name is George Sidney Binckley. I reside at Ocean Park, California. I am 42 years old and by occupation a Consulting Engineer.

Witness stated facts as to previous occupation and familiarity with machinery to qualify him as a mechanical expert and defendants conceded that witness was a mechanical expert.

(Witness continuing:) I have familiarized myself with the patent in suit and describe the device disclosed in the patent as follows: The device consists essentially of the plate forming the face and sides of the buckle or clasp, a hook attached to the plate, a stud engaging with the strap or belt, a bar from flange to flange of the plate or body of the buckle, and a spring tongue attached to the other end of the

(Testimony of George Sidney Binckley.)

belt or strap adapted to engage with the hook which is attached to the plate or body of the buckle. I believe those are the essential parts of the device. In addition, of course, we have the means for securing the spring tongue to the end of the belt. All the parts described except the plate or shield are on the rear side of this plate, all are concealed by the plate or by the belt to which the plate is attached. [35]

The end of the belt to which the belt or shield is attached lies upside of and overlapping the end of the belt to which the spring tongue is attached. I qualify that answer by saying that as shown the end of the belt to which the shield is attached could lie altogether behind the plate or shield itself. The arrangement of the belt and buckle parts other than the plate, rearwardly of the plate or shield permits of the adjustment of the length of the belt by passing it behind the plate or shield to whatever point is desired and securing it to such desired position by the stud. The use and function of the plate or shield would be primarily a support for the interlocking elements of this device and to confine the belt to a position in which it is locked to the plate or shield. The plate or shield, aside from the functions described is, of course, an ornamental feature and in that way may be decorated or given an initial as shown, or anything of that kind. The function of the transverse bar referred to as extending between the flanges of the plate or shield is merely to hold the spring tongue described in its proper relation to the plate or shield and the end of the belt passing under said plate or

(Testimony of George Sidney Binckley.)

shield. When the spring tongue is in engagement with the interlocking member upon the plate I don't see that the transverse bar has any function to perform. In the construction shown in this patent any disturbing stresses might produce, in the absence of the transverse bar, a disengagement of the perforated end of the belt with the plate or shield through the stud holding the belt in its position.

As between Complainant's Exhibit "C" and Complainant's Exhibit "A" there exists a very close similarity; in fact, the two are practically identical. The spring tongue is provided with two lugs bent down at right angles to the spring tongue itself, these lugs passing through slots in the end of the belt and being prevented from being pulled out of these slots by a cotter or split pin passing through both lugs behind the belt; there is also attached to the spring tongue a stud which passes through [36] a hole in the belt giving additional means of attachment of the spring tongue to the belt. This connection of the spring tongue with the respective end of the belt is a thoroughly permanent and positive mechanical connection. When the spring tongue is in engagement with the interlocking part carried by the plate or shield and extends between the transverse bar and the end of the strap or belt the transverse bar referred to would prevent disengagement of the interlocking elements so long as a strain was maintained to keep these parts in engagement. In Complainant's Exhibit "D," the plate or shield of this device is substantially the same as the corresponding parts shown

(Testimony of George Sidney Binckley.)

in Complainant's Exhibit "A" and Complainant's Exhibit "C," the only difference being that instead of a continuous bar extending transversely between the flanges of the plate or shield two lugs are provided extending a short distance inwardly from each flange; aside from this slight difference I find no divergence between exhibits "D," "C" and "A." The substitution of the spaced ears or prongs of Complainant's Exhibit "D" for the continuous transverse bar of Complainant's Exhibit "A" and "C" makes no functional difference whatever; the function is precisely the same in each case and is equally well performed with the continuous bar or with the lugs or prongs described.

The part designated "10" is essentially a hook forming part of the interlocking pair of elements; "13" is a stud, the function of which is to prevent movement of the end of the belt behind the plate or shield and hold it in its proper relation to this plate and the rest of the mechanism. The stud "13" in the exhibit as shown is connected through the swinging hook designated as "10," this hook being pivoted to the flanges of the plate or shield in such a manner that by swinging it away from the plate or shield the stud "13" is disengaged from the belt. "15" is the spring tongue referred to before; its function is to engage the hook "10" so as to hold the end of the belt to which the spring tongue "15" is attached in its proper relation to the [37] buckle or clasp as a whole.

When the tongue "15" is engaged with the hook

(Testimony of George Sidney Binckley.)

plate "10" no effect is produced upon the stud "13." No movement of the hook plate "10" is permitted without movement of the stud "13." The essential elements in the two devices exhibits "A" and "C" and "E" seem to be the same. In the Complainant's Exhibit "E" we have the plate or shield; we have a transverse bar joining the two flanges oppositely rearwardly upon the face of the plate or shield; we have another transverse bar which seems to occupy the same position and to perform the same function as the bar on which the swinging hook of the Complainant's Exhibit "C" is mounted and we have the spring tongue which is "C" in Complainant's Exhibits "A" and "C." The manner of engagement of the spring tongue with the plate or shield is direct in Complainant's Exhibit "E," while in Complainant's Exhibit "C" it is through the swinging hook "10." The hole of attachment of the spring tongue in Complainant's Exhibit "E" seems to be substantially the same as that shown in Fig. 5 of Complainant's Exhibit "A," although the serrated edges shown in Fig. 5 of Complainant's Exhibit "A" do not appear to have been used in connecting the spring tongue of the Complainant's Exhibit "E" with the end of the belt. There is in Complainant's Exhibit "E" a small lug the function of which I am unable to fathom. The mode of attachment of the loose end of the belt to the plate or shield in Complainant's Exhibit "E" is by a stud engaging with a hole in the belt, the stud in this case being attached direct to the back of the shield or plate. Those are the only

(Testimony of George Sidney Binckley.)

differences that I can observe. This stud of Exhibit "E" which is fast to the rear side of a shield or plate has a cut or notch on each side of it near the edge adapted to engage with the V-shaped perforation in the spring tongue; aside from this I don't observe any peculiarity in the construction of this stud. The nature of engagement of the stud with the [38] spring tongue in Complainant's Exhibit "E," due to the peculiar formation of the stud, might be described as positive; it is a positive engagement as a hook is a positive engagement; this is also a positive engagement. When you compare the method of such engagement with the nature of the engagement of the hook plate "10" in Complainant's Exhibit "A" and "C" with the tongue "15," there is certainly no functional difference. I am unable to see any practical difference in the nature of the engagement; both devices depend on the maintenance of a certain amount of tension on the belt to keep the two interlocking parts in engagement; both are released by taking off such tension; both are positive not depending on friction. I don't think it would be improper to say that both might be described as a hook engagement. The function of the stud in retaining the end of the belt in its proper relation to the plate or shield is precisely the same in both cases. In the case of Complainant's Exhibit "E" this stud performs the double function of retaining the end of the belt in the proper relation with the plate or shield and engaging with the spring tongue attached to the other end of the belt. Considering the swinging tongue "10" in

(Testimony of George Sidney Binckley.)

Exhibit "A" as being integral with, or a single piece, the stud "13," this single piece is the equivalent of the stud attached to the rear of the plate or shield in Exhibit "E."

The function of the spring tongue is the same in each case as far as I can see. The bar "9" carrying the hook "C" in Exhibit "A" performs the double function providing support for this swinging hook and retaining the belt in its proper relation behind the shield or plate. In Exhibit "E" the transverse bar performs the same function of retaining the belt in its position. The function of the other transverse bar shown in Complainant's Exhibit "E" is to retain the spring tongue in position behind the belt when engaged with the stud. I have used the terms "hook," "hook-like" or "hook engagement" to convey the impression of engagement of two interlocking parts of such a character as to require maintenance of tension on these parts to retain them in their engagement one with the other. I consider this to be the essential characteristic of hook engagement. [39]

The function of the lugs in Complainant's Exhibit "D" is the same as the function of the corresponding lugs in Exhibit "F" and of the bar in the corresponding position on exhibit "E." There is, of course, a mechanical difference in the arrangement of these parts. Considering simply the hook itself with the spring tongue of Exhibit "A" and "C" and the grooved lug and spring tongue of exhibit "E," I should say they are mechanically equivalent. There is no difference between the function of the stud of

(Testimony of George Sidney Binckley.)

Complainant's Exhibits "A" and "C" and the stud of Complainant's Exhibits "E" and "F" with respect to holding the free end of the belt to the plate or shield. In conclusion I wish to state with respect to the functions and uses of the buckles constituting Complainant's Exhibits "A" and "C" and Complainant's Exhibits "E" and "F" that there is no functional difference in any of the essential elements of the exhibits.

For the complete disengagement of the tongue from the stud and through it the plate or shield, a movement of the tongue longitudinal to the stud is necessary. I would say, however, that where the engagement is complete with the sides of the V-shaped slot bearing into the kerfs on the side of the stud, two movements are necessary to effect disengagement, the same as in other types of hooks, one being transverse to the axis of the stud, the other longitudinal to its axis; the first being to disengage the sides of the V-shaped slot from the kerfs, the second to free the tongue from the stud and allow it to be withdrawn. This same movement in effect is necessary for any other style of hook that I have in mind. The classes of relative movements entering into disengagement of the spring tongue from the hook in Complainant's Exhibits "A" and "C" and the classes of relative movements entering into disengagement of the spring tongue from the stud in Complainant's Exhibits "E" and "F" are the same in each case. Now, in either Complainant's Exhibits "C" and "E" and "F," if the spring tongue be applied to the inter-

(Testimony of George Sidney Binckley.)

locking part and slid in under pressure over that interlocking part until the opening in [40] the tongue receives the interlocking part and then the direction of the movement of the parts be reversed they will enter into a position of engagement one with the other, and under such conditions whether the spring quality of the tongue will be asserted depends upon the detail of the construction of these devices; a very slight change of the position of these parts in relation to each other would change the result. With the spring quality present in these tongues and the tongues slid along the inter-engaging parts under pressure until the inter-engagement takes place, the spring quality during the progress of the inter-engagement apparently will enter into the inter-engagement in Complainant's Exhibit "C" as constructed, while it apparently does not in exhibits "E" and "F." I will supplement that by saying that the spring quality of the tongue seems to exist in exhibit "C" as before described in holding the belt into contact with the plate or shield, while in exhibit "F" no spring quality seems to enter into the engagement or function of this tongue, and in exhibit "E" the spring function is apparently limited to the entrance of the spring tongue into engagement with the hook. I wish to explain that these differences are such and the differentiation is so slight between these exhibits that they might be accidental or intentional. All have certain inherent spring quality, but this spring quality is not the same in exhibits "E" and "F." There is more in "E" than

(Testimony of George Sidney Binckley.)

there is in "F." It appears to be the difference in the metal employed and the shape of the metal as formed. Now, if each of the tongues of Complainant's Exhibits "E" and "F" is placed at its outer end upon the outer end of the stud so that the tongue is flexed slightly and the tongue is moved along the stud until the stud passes through the opening this flexion will be relieved if the opening in the tongue approaches and engages the stud. In connecting the tongue with the stud in bringing the ends of the belt together the tongue will probably be slid along the stud in engagement therewith.

This closes complainant's *prima facie* case. [41]

On April 3d, 1913, at 2 o'clock P. M., testimony was taken before Elmer L. Kincaid, a notary public in and for the County of Los Angeles, State of California, pursuant to notice and stipulation, and there were present Raymond Ives Blakeslee, counsel for complainant, and G. E. Harpham and C. W. Hoag, counsel for defendants. Witnesses were examined on behalf of defendants by Mr. Harpham.

[Testimony of F. E. Monteverde, for Defendants.]

F. E. MONTEVERDE, a witness produced on behalf of the defendants Fresno Monogram Adjustable Buckle Company and Walter B. Bliss, being first duly sworn, testified as follows:

My name is F. E. Monteverde. I am 63 years old and am by occupation a mechanical expert. I reside at Los Angeles, California.

In answer to questions witness qualified as a mechanical expert.

(Testimony of F. E. Monteverde.)

(Witness continuing:) I have seen the Spangler patent sued on in his action and have familiarized myself with the same. I have examined letters patent No. 132,051, issued to F. Busch, October 8, 1872, and I have familiarized myself with it and understand it.

Mr. HARPHAM.—I now offer in evidence the following United States letters patent, to wit: Patent to F. Busch, No. 132,051, issued October 8, 1872, and the same is marked “Defendants’ Exhibit 1, Busch patent”; patent to E. B. Koopman, No. 544,856, dated August 20, 1895, marked “Defendants’ Exhibit No. 2, Koopman Patent”; patent to E. Graves, No. 556,413, dated March 17, 1896, marked “Defendants’ Exhibit No. 3, Graves Patent; patent to M. T. Goldsmith, No. 577,850, dated March 2, 1897, marked “Defendants’ Exhibit No. 5, Goldsmith Patent”; patent to C. E. Mixer, No. 672,793, dated April 23, 1901, marked “Defendants’ Exhibit No. 4, Mixer Patent”; patent to E. G. Latta, No. 205,715, dated July 2, 1878, marked “Defendants’ Exhibit 6; patent No. 1,034,681, to W. B. Bliss, dated August 6, 1912, marked “Defendants’ Exhibit No. 9, Bliss Patent.” [42]

Mr. BLAKESLEE.—The offer of the Bliss patent is objected to as not coming within the pleadings of this case and as not being set up in the defence in the answer of either of the defendants, and is irrelevant, incompetent and immaterial and on other grounds. The offer of each of the other patents as exhibits on behalf of the defendants is also objected to on the

(Testimony of F. E. Monteverde.)

ground that the same are not identified, and no foundation laid for their offer and introduction as exhibits in this case, and therefore as incompetent.

Mr. HARPHAM.—They are offered as showing the state of the art and for the purpose of anticipating the patent sued on, the Spangler patent, and if not anticipating the patent, then for the purpose of limiting the patent to the specific construction of parts, as shown and described in the patent sued on.

Mr. BLAKESLEE.—Any such showing which these patents may have is a matter entering into the disclosures of the patents themselves when properly presented for consideration.

Mr. MONTEVERDE (Resuming).—Now, referring to the Spangler patent and the Busch patent, "Defendants' Exhibit 1," each buckle has a shield or plate provided with rearwardly disposed bars spaced therefrom. In the Spangler patent the shield is marked 6 and the bar 8. In the Busch patent the shield is marked A and the bar b. Big A and the bar small b. In the Spangler patent bar 8 is held by the side flanges turned up from the face of the shield, and in the Busch patent, the bar b is held by lugs; also on the back of the shield. Both have holding means for connecting the shield with the strap shown in both drawings. In the Spangler patent the holding means is a stud marked 13. This stud is on the shank of the interlocking springing tongue 10. In the Busch patent the holding means are the retaining hooks shown as a, which are shown in the drawing. Both patents have interlocking elements,

(Testimony of F. E. Monteverde.)

one of which is connected to the shield and the other to the end of the strap. In the Spangler patent the interlocking element [43] which is connected to the shield is a spring tongue, 10; this tongue having a hook 12, on the end thereof and a stud 13 thereon; and the other interlocking element is a spring tongue 15, which has a transverse elongated slot 19. This elongated slot occurs in the outer end which allows the curved lip or hook 12 of the springing tongue to pass into engagement with the end of the springing tongue 15.

In the Busch patent the interlocking elements are the bar, marked b, already mentioned, and the hook d, which hook attaches over the bar b. I have examined exhibits "E" and "F." With a slight modification in the construction they are both practically alike, substantially the same one with the other. Both of these exhibits have a shield, has the same construction practically as the Spangler and Busch patents. They also have a stud connected to the back of the shield at the front end of the shield by means of which the free end of the belt is detachably and adjustably connected to the shield. In this respect they are identical with the Busch patent except that Busch uses two curved studs or hooks, substituting them for the single stud in the other one. The elements in this construction I do not find in the Spangler patent. Another method of uniting the two ends of the belt, that is to say, these two exhibits, in their method of uniting the two ends of the belt, they differ from both Spangler and Busch.

(Testimony of F. E. Monteverde.)

These exhibits both have a tongue which has a longitudinal slot broader at the end nearest the point where it is secured upon the end of the belt and narrowest toward the other end, and is attached upon the end of the belt. The manner of attachment to the end of the belt in this exhibit is shown by clamping over three triangular pieces that have been gouged from the plate proper and riveted over and clamped onto the end of the plate that holds it (witness points to Complainant's Exhibit "E") and in the other exhibit the clamping is practically the same, except in one case its clamps longitudinally and in the other one transversely, but the method of clamping is identically the same [44] in both. This tongue that I have described and shown in the exhibit is passed under lugs secured upon the side flanges of the shield, which lugs are secreted near the stud and then are passed over the stud itself, with the slot surrounding the said stud, that is, after the free end of the belt is on the stud.

It is the same on both. I am answering in regard to exhibits "E" and "F," referring to Complainant's Exhibits "E" and "F." In this construction these exhibits "E" and "F" are different from both the Spangler and the Busch patents. In the Busch patent the hook d hooks over the bar b, thus holding the ends of the belt together. In the Spangler patent the stud 13, and the tongue 10, to lock the belt, this tongue 10 must be passed into the free end of the belt and the spring tongue 15 is then passed under bar 8, and the transverse slot 19 permits the

(Testimony of F. E. Monteverde.)

end thereof to snap into engagement with the hook 12 on the end of tongue 10. Now, these kerfs on the studs of both the above-mentioned exhibits are for the purpose of allowing the stud to slide a little further in the slots, and to keep the tongue from longitudinal movement as to the axis of the stud when in contact with the sides of the stud when within the kerfs. They also serve as a safeguard to keep the tongue from slipping longitudinally on the stud. Were these kerfs omitted, the engagement and holding capacity would be just as great in one sense, but not in the other; that is to say, omitting the kerfs the tongue might be subject to longitudinal movement as to the axis of the stud, and therefore more likely to come off the stud accidentally. This would not occur by the use of the kerfs.

By Mr. HARPAM.—I now show you a buckle which we ask to have marked Defendants' Exhibit 10, which is identical in construction with exhibit "F," with the exception that there are no kerfs in the side of the stud, and ask that it be marked Defendant's Exhibit 10 in connection with the testimony just given by the witness. [45]

Mr. BLAKESLEE.—We object to the offer of this exhibit with any statement as to its construction or its construction in comparison with Complainant's Exhibits "E" and "F." Let the witness compare this device with the other exhibits; let the testimony be adduced in that manner.

(The buckle last referred to is marked Defendants' Exhibit No. 10.)

(Testimony of F. E. Monteverde.)

(Witness resuming:) Exhibit 10 differs from exhibit "F" in that the holding stud already described is a plain stud without any kerfs.

Referring to the engagement between the tongues in exhibits "E" and "F" with the studs in those exhibits I would describe the interlocking device not as hooking the parts together or connecting them by hooking one upon the other, but more as a button and button-hole engagement, the stud representing the button in the case and the triangular shaped slot representing the button-hole.

Mr. HARPAM.—You may cross-examine.

On cross-examination by Mr. Blakeslee the witness testified:

Now, in Defendants' Exhibit 10 the shield has two lugs on to which and between the inner face of the belt and the lugs the tongue is held in place. These lugs are in such position that they confine the outer end of the tongues. They are nearer to its outer end. The inner end of the tongue is free to play along the stud when loose like exhibits longitudinally. I call the mode of inter-engagement of the stud on the tongue in this exhibit 10 a positive locking inter-engagement as made, to withstand a longitudinal, you may say, or lateral movement, but it is not as positive a locking engagement as where the kerfs are employed on the stud as in Complainant's Exhibits "E" and "F." The use of these kerfs produces a much more effectual and positive interlocking engagement. A button-hole in order to enable the button to be passed through it in either direction must be pliable

(Testimony of F. E. Monteverde.)

in most cases. I find no pliability in the tongue of Complainant's [46] Exhibits "E" and "F," which would permit it to materially yield so that the ends of the studs outwardly of the kerfs can be disengaged with the tongues by bending the material. The material is metallic and rigid.

Referring to Defendants' Exhibit 1, Busch Patent, the holding means on the free end of the belt is not engaged with the hook or studs, a, or with any hook or part on or directly connected with that stud. They engage the hooks and the hooks project below the shield inwardly. One end of the belt is connected with the hook, a, and the other end of the belt is hooked on to the transverse bar b, and these hooks a, are not connected with the bar b, not directly; they are both connected and form part of the shield A.

They are both independently connected with the shield A. Bar b, is connected by means of ears or lugs projecting below the shield, and the hooks, a, form part and parcel of the shield itself, either by soldering or other manner of attaching so both have one common base in attaching to this shield. When the hook b is engaged with the bar d, it is not engaged with or passed beneath any other transverse bar or transversely projecting ear on the shield or plate. The hooks a are at points remote from the hook d, when the same is engaged with bar b. By remote I mean that there is a separating space between them. You could entirely remove the hooks a, or the transverse bar b, with-

(Testimony of F. E. Monteverde.)

out in any way transforming or affecting the other and the other would still remain in position for use, but I can't imagine what the utility of a thing of that kind would be there. There would be no locking means to utilize the shield as a belt or buckle.

In Complainant's Exhibit "A," if you remove the hook 10 you also remove the stud 13. In Complainant's Exhibit "E" and "F," if you remove these studs you remove both the means for holding one end of the belt to the plate, and also the means for detachably engaging the buckle with the other end of the belt. [47]

[Testimony of Frank Waterfield, for Defendants.]

FRANK WATERFIELD, a witness produced on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HARPHAM.)

My name is Frank Waterfield; I am thirty years old; reside in Los Angeles, California, and am a draftsman by occupation.

I have been in the mechanical business for the last eighteen years in various factories around Rhode Island mostly; for the last three or four, possibly five years, I have been making drawings and helping make up specifications. I have seen the Spangler patent before and I have studied the matter over carefully and thoroughly understand it. I have seen the Busch patent before and have studied that carefully and thoroughly understand it.

The points of similarity and dissimilarity between

(Testimony of Frank Waterfield.)

the buckles described in the Spangler patent, the patent in suit, and the Busch patent are as follows: They both have a shield and a rearwardly disposed bar spaced therefrom. The bar on the Spangler patent is secured to the side members of the shield and the bar on the Busch patent is secured to lugs mounted on the back of the shield. Both have interlocking members, one of which is fastened to the shield and the other to the free end of the belt. In the Spangler patent the interlocking members consist of a springing interlocking hook 10, having a hook 12, on one end of it and a stud 13; and a spring tongue 15, having a traverse slot near the end of that fastened on to the free end of the belt. In the Busch patent the interlocking members consist of hooks fastened to the back of the shield and a hook that is fastened onto the free end of the belt, which hooks over the bar b, secured to the back of the shield. These buckles on exhibits "E" and "F" are substantially the same. There is a slight difference in construction, but for practical purposes they are the same. Exhibit "E" compares with the Spangler patent; they both have a shield, side members interlocking elements; the retaining members of the [48] Spangler patent consist of the swinging tongue 10 and the stud 13 as far as the shield is concerned, and on the exhibit "E" the retaining members consist of a stud that is secured at one end on the back of the shield. The interlocking elements consist in the Spangler patent of the swinging tongue 10, the stud 13 thereon and a

(Testimony of Frank Waterfield.)

hook that has a curved lip that curves rearwardly, and the spring tongue 15, that has got a transverse elongated slot near the end and this spring tongue is passed under the bar 8, and then is adapted to spring over and have a hooking engagement with the hook 12. In exhibit "E" the interlocking means consist of a bar which is similar to bar 8 in the Spangler patent, and the stud which also retains the belt—or rather secures the belt to the shield, and a tongue having an elongated slot that runs longitudinally of the tongue, and the largest end at a point where the tongue joins the belt and narrows down toward the other end. In the Busch patent the interlocking means consist of the bar b, which is disposed rearwardly from the back of the shield, and a hook d, which is secured to the free end of the belt and which hooks over the bar b. The belt is secured to the shield in the Busch patent by means of curved studs or hooks a, which are secured to one end of the shield. The function of those kerfs in exhibits "E" and "F" is to allow the spring tongue to slide further on the stud, and when the edges of the slot are in contact with the sides of the kerfs it prevents longitudinal movement of the locking tongue on the stud; that is, the longitudinal movement is as to the axis of the stud. The engagement and holding capacity of the stud in the tongue would be as great were these kerfs omitted as it is with the kerfs, but it would be more liable to slip off the stud longitudinally than if the kerfs were there; provided as a sort of

(Testimony of Frank Waterfield.)

safeguard against accidental disengagement. The engagement of the tongue with the stud in these kerfs is not a hooked engagement, [49] because in a hooked engagement, a hook is necessary in order to make the parts perform their function. Remove the hook and the engagement is gone. In the case of these exhibits, if you remove the kerfs, the engagement is still there.

On cross-examination by Mr. Blakeslee the witness testified as follows:

If the kerfs in Complainant's Exhibits "E" and "F" were removed there would be a positive interlocking engagement between the tongues and the studs. Such engagement would prevent movement between the tongues and the studs in more than one direction. While it is being worn I should say the friction of the slot on the stud would prevent longitudinal movement of the tongue on the stud. If the tension on the belt were eased up that frictional engagement would hold the parts against slipping unless the tension were very loose. When the kerfs are present it is a much safer engagement, and it positively prevents the tongue from playing or slipping along the stud longitudinally of the stud and becoming disengaged from the stud. As a matter of fact, I judge the kerfs on the studs in exhibits "E" and "F" are for the same purpose as the hooked end of the plate 10, in the Spangler patent. In the Busch patent those hooks a, really have no kerfs but the forwardly extending portion of the hooks would practically or might answer the same

(Testimony of Frank Waterfield.)

purpose as a kerf. A kerf is a narrow slot. Those hooks a, are not shown slotted in any respect. The hooks a, in the use of the Busch device are not in any manner engaged with the hook d, to interlock the parts together except through the medium of the belt. The hook d, is not a tongue with a slot as I see it, and in that respect it differs from the tongue of the Spangler patent buckle, and also the tongues of exhibits "E" and "F." In this Busch patent buckle there is no cross bar or inwardly projecting part or ear which engages with the tongue. [50] In the device of this Busch patent there are no extended flanges rearward of the plate A between which the tongue and the belt end are confined. The cross-bar b, is an element entirely distinct and separate from the hook a, but the bar b forms one of the interlocking elements. The bar b, and the hook a, are independently connected with the plate A, at separate points. In both the Spangler patent device and the Complainant's Exhibits "E" and "F" there are means projecting inwardly of the flanges and over or behind the spring tongues when the parts of the buckle are interlocked, and the spring tongues and one end of the belts in each instance lie between these bars or ears and the plate or body of the buckle. These transverse bars or ears thus confine the tongues and said belt ends between them and the body or plate of the buckle in each instance.

The foregoing is presented by appellants Walter B. Bliss and Fresno Monogram Adjustable Buckle Company as a condensed statement of the evidence,

the exhibits referred to herein being on file and hereby referred to and made a part hereof.

G. E. HARPHAM,
NEIGHBOURS, SPROULE & HOAG,
Solititors for Appellants.

Approved.

RAYMOND IVES BLAKESLEE,
Solicitor for Complainant.

**[Order Settling and Allowing Condensed Statement
of Testimony.]**

The foregoing statement of condensation of testimony is hereby settled and allowed under the order of the Court.

Dec. 15th, 1913.

OLIN WELLBORN,
Judge. [51]

[Endorsed]: 209—Civil. U. S. District Court, Southern District of Cal. G. P. Spangler, Pltff., vs. W. B. Bliss et al., Defts. Settled Abstract of Testimony. Filed Dec. 15, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [52]

Complainant's Exhibit "A"—Spangler Patent.

G. P. SPANGLER.

CLASP OR BUCKLE.

APPLICATION FILED MAY 5, 1910.

972,937.

Patented Oct. 18, 1910.

Fig. 1.

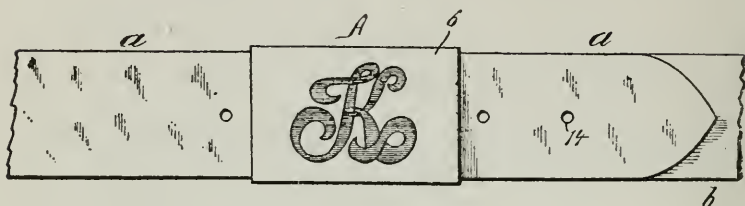


Fig. 2.

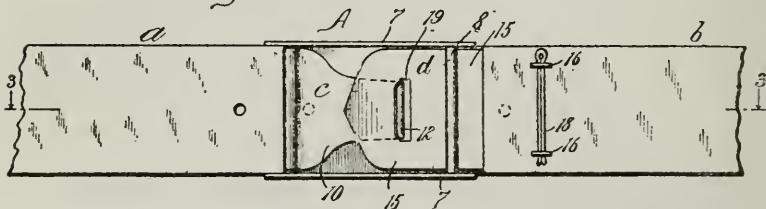


Fig. 3.

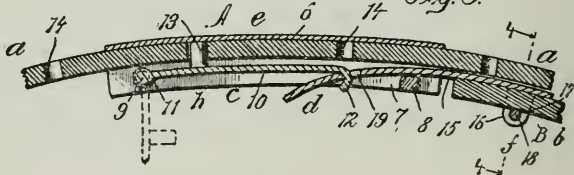


Fig. 4.

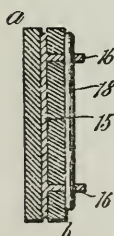
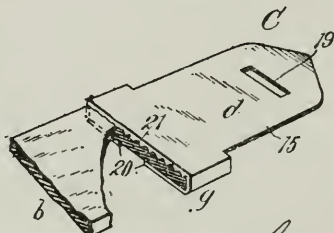


Fig. 5.



Witnesses

My Cousin
B. F. Fletcher.

Inventor
George P. Sengler,
By Buckner & Claiborne.
Attorneys

UNITED STATES PATENT OFFICE.

GEORGE P. SPANGLER, OF LOS ANGELES, CALIFORNIA.

CLASP OR BUCKLE.

972,937.

Specification of Letters Patent.

Patented Oct. 18, 1910.

Application filed May 5, 1910. Serial No. 559,625.

To all whom it may concern:

Be it known that I, GEORGE P. SPANGLER, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Clasps or Buckles, of which the following is a specification.

This invention relates to clasps or buckles, or similar adjustable connection and attachment devices; and it has for its object to provide improvements with relation thereto which will be superior in point of positiveness in operation, convenience in use and manipulation, facility in installation or connection, and disconnection, with respect to working position, relative simplicity and inexpensiveness in construction and general efficiency.

The invention has for its particular objects the provision of an improved clasp or buckle which will be more slightly in appearance and more conveniently manipulated, in service, than are devices of the same general character now customarily employed; and the use of which is attended by less injury to the belt or other device or object in connection with which it is employed.

The invention consists in the novel provision, construction, formation, combination and association of parts, members and features all as hereinafter described, shown in the drawings, and finally pointed out in claim.

In the drawing:—Figure 1 is a front face view, or outer face view, of a clasp or buckle organized and constructed according to the invention and mounted upon and connected with a belt; Fig. 2 is a rear, or inner face view of the same; Fig. 3 is a longitudinal sectional view of the same, taken on the line 3—3, Fig. 2; Fig. 4 is a transverse sectional view, taken upon the line 4—4, Fig. 3, and looking in the direction of the appended arrow; the showing in this figure being turned into a position at an angle of ninety degrees to that shown in Fig. 3, and, Fig. 5 is an isometric view of a modified form of construction of a feature of the invention shown in Fig. 3, the same being shown in a position the reverse of that of the corresponding feature shown in Fig. 3.

Corresponding parts in all the figures are designated by the same reference characters.

Referring with particularity to the drawing, the improved clasp or buckle therein

shown as embodying the invention comprises two members or parts, A and B respectively, and a member C which is adapted for use in substitution for the member B. The said members A and B are shown as respectively applied to the end portions *a* and *b* of a belt shown fragmentarily in the drawing, the member C being also shown as attached to the end portion *b*, in Fig. 5, for use in substitution for the member B. The members A and B include or are provided with interlocking elements, *c* and *d* respectively, the member C having a similar element *d* for co-action with the element *c*. The member *c* is pivotally mounted upon a body *e* included within the member A; and the member *d* is shown in Fig. 3 as detachably connected with the belt end *b* by holding means *f*; whereas in Fig. 5 the member *d* is shown as permanently connected with the belt end *b* by holding means *g*.

h designates holding means for connecting member A with the belt end *a* in position of relative adjustment of the same; such holding means *h* being connected in common formation with the element *c*.

The body *e* preferably comprises a plate or shield 6 which may be given a longitudinal curvature proper to cause it to conform to the line of extension of the belt upon which the clasp or buckle is mounted, when said belt is placed around the body of the wearer. The particular conformation of said shield or plate will, it is to be understood, be predetermined by the nature of the service in which the belt and the clasp or buckle thereon are to be employed. The outer or front face of the plate or shield 6 may be ornamented in any preferred and suitable manner, an example of which is disclosed in Fig. 1. The plate or shield 6 is provided with spaced lateral flanges 7, both directed rearwardly from the plate or shield substantially rectangularly and adjacent to corresponding ends of said flanges the latter are connected by a cross-bar 8 which bridges the space between the flanges and connects the outer edge portions thereof. The opposite end portions of the flanges 7 are connected by a pin or bar 9 upon which is pivotally mounted the element *c*, the latter consisting of a metallic tongue or plate one end of which is formed into a knuckle 11 which pivotally embraces the pin or bar 9, and the other or outer end of which is provided with a curved or angular lip 12,

972,937

said lip 12 being directed away from the plate or shield 6. Formed upon or connected with the tongue or plate 10 and projecting from the face thereof and next adjacent to the plate or shield 6, is a stud 13 suitably proportioned to enter and be accommodated by any one of the ordinary belt holes 14 formed in the end portion *a* of the belt, and constituting the holding means *h*. The element *d* comprises a plate or tongue 15 one end of which is provided with ears 16 projecting from the face thereof which is directed away from the plate or shield 6; the ears 16 being formed for projection through suitable openings in the end portion *b* of the belt, and being provided with transverse holes or openings 17 for the reception of a cotter pin 18, or equivalent device serving to detachably secure the plate 15 to the belt end portion *b*. The plate or tongue 15 is adapted to be attached by the holding means *f* to the belt end *b*, and is of such dimension longitudinally, that when the belt end *b* is brought substantially up to the end of the member A at which the cross-bar 8 is disposed, the tongue 15 may lie between the cross-bar 8 and the belt end *a*, which latter will lie directly rearwardly of the plate or shield 6, and so that the element *d* may coengage with the element *c*. To the latter end, the plate or tongue 15 is provided with a transverse elongated slot 19 for the reception of the lip 12 upon the plate or tongue 10; and the plate or tongue 15 is furthermore possessed of an inherent spring quality, and is formed with a longitudinal curvature, so that the outer end portion thereof rides over the lip 12, when the element *d* is passed between the belt end *a* and the cross-bar 8, causing the automatic inter-locking of the elements *c* and *d*. Furthermore, said elements may be disengaged one from the other by the passage of the thumb or finger behind the outer end of the plate or tongue 15, between said outer end and the plate or tongue 10, increasing the longitudinal curvature of or bowing the plate or tongue 15 free from the lip 12. As shown, the belt end *a* normally extends directly rearwardly or behind the plate or shield 6, and between the same and the plate or tongue 10, and overlaps the extreme end portion of the belt end *b*. The total operative length of the belt, or the degree of overlap of the end portions *a* and *b* thereof, is determined in accordance with the adjustment of the member A upon the belt end *a*; the member A and the belt end *a* being maintained in position of relative adjustment by the disposition of the stud 13 in the proper belt hole 14. And the member A is freed from the belt end *a* to enable such relative adjustment, by pivotally swinging the tongue or plate 10 constituting the

element *c* upon the pin or bar 9, so as to release the stud 13 from the belt hole 14 within which it lies; the position of said tongue or plate 10 resultant upon said pivotal movement being shown in dotted lines in Fig. 3.

Referring to Fig. 5, the holding means *g* shown therein as permanently connecting the element *d* consisting of the tongue or plate 15, with the belt end *b*, comprises integral ears 20 projecting laterally from the plate or tongue 15 and caused to embrace the edge portions of the belt end *b*, under compression; together with integral serrations 21 formed upon the inner end of the plate or tongue 15 and forced into the belt end *b*.

The holding means *f* are preferably employed when the clasp or buckle is to be used in connection with women's belts, sashes and similar articles of wearing apparel, which may be readily interchanged, as desired, in the selection of the same according to style, design or color; whereas the holding means *g* are preferably employed in connection with belts constituting portions of male attire and of the more durable materials, such as leather and canvas. The use of the holding means *f*, permitting ready detachment of the member B from the belt, also enables the wearer to interchangeably use a number of buckles or clasps embodying the invention, which may be variously designed, constituted or ornamented, as desired.

It is manifest that when the belt or other article to which the clasp or buckle is applied is fitted to the body of the wearer, or otherwise disposed in position of service, the only outwardly exposed portion thereof consists of the shield or plate 6, the wearing parts of the clasp or buckle, namely the inter-locking elements *c* and *d*, and the holding means *h* and *f* or *g*, being arranged rearwardly or inwardly of the plate or shield and the strap ends. It will furthermore be noted that the ends of the strap or belt, or other device, are maintained in flat formation, without any distortion such as accompanies the employment of the ordinary buckle tongue, and the life of the belt or strap is therefore extended.

A particular advantage attending the use of the improved clasp or buckle consists in the facility with which the inter-locking members thereof may be co-engaged, or disengaged each from the other. To co-engage the same as set forth, all that is necessary to do is to bring the belt ends together, one over the other, and pass the spring tongue 15 within the cross-bar 8 until the lip 12 enters the slot 19; and to disengage the spring tongue 15 from the plate 10 and the lip 12 thereon, it is only necessary to pass the thumb or finger between the plate or

672,937

3

tongue 10 and the spring tongue 15, at the outer end of the latter, so as to bend the spring tongue 15 sufficiently to release the lip 12 therefrom.

5 Having thus described my invention, I claim and desire to secure by Letters Patent:—

A clasp or buckle, comprising a shield or plate provided with a rearwardly disposed
10 bar spaced therefrom, holding means for connecting the shield or plate with a strap or other device, inter-locking elements, one of said inter-locking elements being connected with said shield or plate rearwardly
15 thereof, and holding means for connecting the other of said inter-locking elements with

a strap or other device; one of said inter-locking elements consisting of a spring tongue adapted to be passed between said shield and said bar and being provided with
20 an opening, and the other of said inter-locking elements being formed for hook engagement with said spring tongue through said opening.

In testimony whereof, I have signed my
25 name to this specification in the presence of two subscribing witnesses.

GEORGE P. SPANGLER

Witnesses:

RAYMOND I. BLAKESLEE,
H. O. BOWSER.

Defendants' Exhibit No. 1—Busch Patent.

F. BUSCH.

Improvement in Buckles.

No. 132,051:

Patented Oct. 8, 1872.

Fig. 1

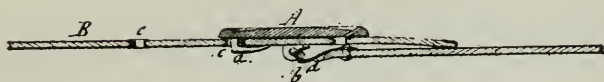


Fig. 2.

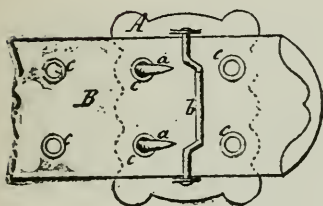
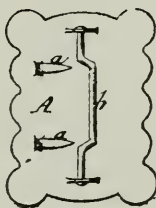


Fig. 3



Witnesses
L. M. Bickel
P. W. H. W.

Inventor
Florian Busch
per
The Secretary's Office
H. H. H.

UNITED STATES PATENT OFFICE.

FLORIAN BUSCH, OF NEW YORK, N. Y.

IMPROVEMENT IN BUCKLES.

Specification forming part of Letters Patent No. 132,051, dated October 8, 1872.

To all whom it may concern:

Be it known that I, FLORIAN BUSCH, of the city, county, and State of New York, have invented a new and useful Improvement in Buckles; and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawing forming part of this specification, in which drawing—

Figure 1 represents a longitudinal vertical section of my invention, showing the same when attached to strap or belt; Fig. 2 is an inverted plan of the same when attached to a belt; and Fig. 3 is a similar view of the same when detached.

Similar letters indicate corresponding parts.

This invention consists of a plate in imitation of a buckle, which is provided on its back with one or more retaining-hooks and with a cross-bar that prevents the retaining-hook or hooks from becoming disengaged, and also serves as a portion of the fastening device for connecting the two ends of a belt or strap, the whole being constructed in such a manner that the face plate of the buckle remains unbroken and conceals the entire fastening device; and furthermore, the strap or belt attached to my buckle is not injured in its appearance.

In the drawing, the letter A designates the face plate of an imitation buckle, to the under surface of which are secured one or more hooks, *a*, and also a cross-bar, *b*, which is, by preference, bent out as shown in Figs. 2 and 3, but which may be made in any desirable form or shape.

In attaching my buckle to a strap or belt, B, one end of said strap is provided with several sets of holes, *c*, Fig. 2, intended to receive the retaining-hooks *a* of the buckle. This end of the belt is passed through between the cross-bar *b* and the face plate A; and the retaining-hooks are made to catch in one of the sets of holes *c*. On the opposite end of the belt B is secured a hook, *d*, Fig. 1, which

can be made to catch over the cross-bar *b*, for the purpose of securing the two ends of the belt together.

In order to adjust the length of the belt or strap, the retaining-hooks *a* of the buckle are disengaged and moved into another set of the holes *c*, either up or down as the desired length of the belt may require. This operation can be effected very easily, and if the retaining-hooks have entered the holes *c* they are not liable to become disengaged spontaneously, since the cross-bar *b* is situated so close to the points of the hooks that the belt is not able to rise sufficiently to allow the hooks to drop out of the holes. The form of this cross-bar may, however, be changed to suit convenience and taste.

By these means a buckle is obtained, the face of which can be made of any desired shape, and ornamented in any desirable manner, while its face plate covers up and conceals the fastening devices; and furthermore, the fastening devices are so constructed that they produce no marks on the outer surface of the belt, and the length of the belt can be adjusted without impairing its appearance, while in ordinary buckles the belt, when strained, receives an impression in its face, and when the length of the belt is changed this impression becomes visible and spoils the appearance of the belt.

My buckle is cheap in its construction, convenient in its application, and economical in its use.

What I claim as new, and desire to secure by Letters Patent, is—

The face plate A, provided with a cross-bar, *b*, and one or more retaining-hooks *a*, combined substantially as described, and adapted to connect with a hook, *d*, as set forth.

This specification signed by me, this 29th day of August, 1872.

FLORIAN BUSCH.

Witnesses:

W. HAUFF,
E. F. KASTENHUBER.

Defendants' Exhibit No. 2—Koopman Patent.

The Model.

E. B. KOOPMAN.
BELT ATTACHMENT.

No. 544,856.

Patented Aug. 20, 1895.

Fig. 1,

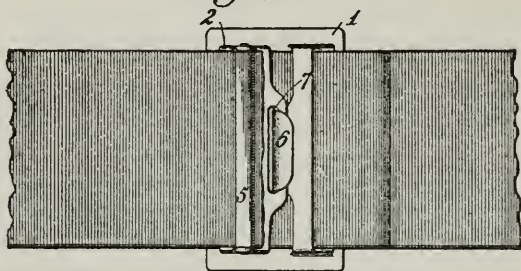


Fig. 2,

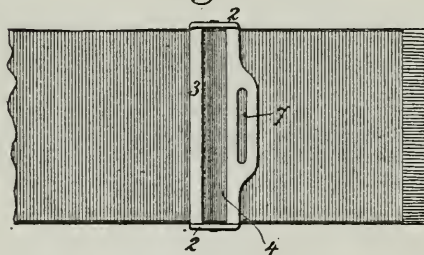


Fig. 3,

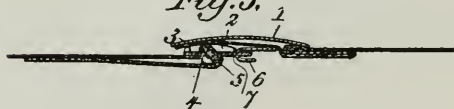
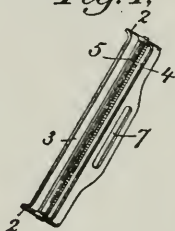


Fig. 4,



Witnesses:-

D. H. Haywood
L. H. Marble

Inventor:

Elias B. Koopman
By E. M. Marshall
His Attorney.

UNITED STATES PATENT OFFICE.

ELIAS B. KOOPMAN, OF BROOKLYN, NEW YORK

BELT ATTACHMENT.

SPECIFICATION forming part of Letters Patent No. 544,856, dated August 20, 1895.

Application filed April 17, 1895. Serial No. 546,010. (No model.)

To all whom it may concern.

Be it known that I, ELIAS B. KOOPMAN, a citizen of the United States, residing at Brooklyn, in the county of Kings and State of New York, have invented certain new and useful Improvements in Belt Attachments; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

My invention relates to attachments for belts or other similar bands, and particularly to adjustable slides or end pieces for belts; and my invention consists in the novel means provided of holding the belt within this slide or end piece, in the novel construction of the end piece, and in the novel form, construction, and arrangement of the parts thereof.

Belt-clasps usually consist of two metal pieces, mounted upon or secured to opposite ends of the belt, and arranged to be fastened together by a hook or other suitable means. One of these metal pieces or attachments is usually a belt-plate, usually sewed or otherwise attached permanently to the belt. This belt-plate or belt attachment is usually provided with a hook adapted to engage with an eye or slot in the attachment upon the other end of the belt. This second belt attachment is usually loose upon the belt to permit of adjustment of the length of the belt, and consists of a metal plate, slotted to permit the belt to pass therethrough. It may properly be termed the "end piece" of the belt. The end of the belt, after passing through the slot in this end piece, is usually attached to a slide mounted upon and free to slide along the belt, and by moving which back and forth the length of the belt is adjusted. In order that the slide may remain in place when once adjusted, and so keep the length of the belt constant, it is necessary that the belt-ribbon be sufficiently long so that it may be doubled backward for a considerable distance, the slide occupying a position well around the side of the wearer. It will be seen, therefore, that with the ordinary belt-clasp a belt-ribbon must be used which is considerably longer than is necessary or desirable, and there is considerable waste of material.

By my invention I combine the end piece and slide in one by providing an end piece arranged to grasp the ribbon and prevent it from slipping.

The objects of my invention are, first, to provide an end piece for belts arranged to grasp the belt-ribbon without injuring the same; second, to provide an end piece which, while arranged to grasp the belt, may be readily adjustable thereon; third, to provide an end piece through which the belt may be passed easily and readily, and which shall be so constructed that it is immaterial which side of this end piece may be outermost, thereby avoiding danger of putting the end piece upon the belt wrongly, and, fourth, to make this end piece strong, simple, compact, and easy of use with any of the ordinary belt-plates.

These objects are attained in the invention herein described, and illustrated in the drawings which accompany and form a part of this application, in which the same reference numerals indicate the same or corresponding parts, and in which—

Figure 1 is a rear view of a portion of the belt, showing upon one end thereof an ordinary belt-plate and upon the other end an end piece engaging with said belt-plate and constructed in accordance with my invention. Fig. 2 shows the end of a belt with my end piece thereon. Fig. 3 is a sectional view of a belt-plate and end piece, showing the method of passing the fabric through the end piece. Fig. 4 is a detail perspective view of the end piece.

In the drawings, 1 is an ordinary belt-plate, which may be attached to the belt in any suitable and common manner.

2 is the end piece, consisting of a guard-plate 3, provided with a longitudinal slot 4, in which is pivoted a tongue 5, the ends of the guard-plate being upturned slightly and provided with apertures which form bearings for the end of the tongue. This tongue is placed in the center of the slot 4 and is pivoted about its own central axis. It is slightly narrower than the slot 4, and therefore may be freely revolved therein. The edges of the tongue 5 are serrated, preferably, to afford a better grasp on the fabric.

The belt-plate is provided with the usual

hook 6, adapted to engage with a corresponding slot 7 in the guard-plate. In placing my end piece upon the belt the end of the belt is passed through the slot 4 between the edges of the guard-plate and tongue 5, upon the side of the tongue farthest from the slot 7, and is passed through the slot 4 from that side of the end piece which is to be the inner side. Which side of the end piece is selected for the inner side is immaterial, as will be seen. The end of the belt is then passed over the tongue through the slot 4 between the edge of the guard-plate and the tongue 5, and this time on the side of the tongue nearest the slot 7. The end of the belt is folded back parallel with the main portion of the belt, this loose end being inside when the belt is worn. When the belt is passed through the end piece in this manner and is drawn tight, the strain upon the belt tends to turn the tongue 5 as nearly as possible parallel with the guard-plate 3, so that the fabric of the belt is pressed between the edge of the guard-plate and the edge of the tongue upon both sides of the tongue. This pressure is sufficient, so that the belt is held very firmly within the end piece. When the belt is loose it is easy to adjust the position of the end piece, and therefore the length of the belt, by simply sliding the end piece along the belt, which may be done without difficulty if the tongue be prevented from pressing the fabric too firmly against the guard-plate by holding the same at nearly right angles with the guard-plate with the finger. As soon as strain comes upon the belt, however, the tongue is caused to press the fabric against the edge of the guard-plate, and holds the same so firmly that it is impossible for the end piece to slip. It will be observed that with this end piece no separate slide attached to the end of the belt and sliding on the belt is necessary, nor is it necessary that the end of the belt shall be folded backward for a considerable distance, as is the case with the belt-clasps ordinarily used, a margin of an inch or less beyond the end piece being amply sufficient to prevent the end piece from slipping. When it is desired to use a slide upon the belt, however, for holding the end of the belt-ribbon, the belt attachment herein described may be used for that purpose, the slot 7 being long enough to receive the end of the ribbon. When my

belt attachment is so used, the end piece will ordinarily be a simple loop. The fact that the tongue 5 is pivoted at its central axis in the center of the slot 4, and that this tongue may be revolved completely around within said slot, makes it possible to have either side of the guard-plate turned outward. It likewise greatly facilitates the threading of the end of the belt through the slot 4 around this tongue.

Having thus completely described my invention, what I claim, and desire to secure by Letters Patent, is—

1. The herein described belt attachment, consisting of a guard plate slotted longitudinally, and a tongue pivoted in said slot, said guard plate and tongue being arranged to permit the ribbon to pass through said slot and between the edges of said guard plate and tongue, on both sides of said tongue, substantially as described.

2. The herein described end piece of a belt clasp, consisting of a guard plate slotted longitudinally, and a tongue pivoted in such slot, said guard plate and tongue being arranged to permit the ribbon to pass through said slot and between the edges of said guard plate and tongue on both sides of said tongue, and said guard plate being provided with means for attaching the same to the other end of the belt, substantially as described.

3. The herein described end piece of a belt clasp, consisting of a guard plate slotted longitudinally, and having a tongue pivoted through its central axis in the center of said slot, and revoluble therein, said guard plate being provided with means for attaching the same to the other end of the belt, substantially as described.

4. The herein described end piece of a belt clasp, consisting of a guard plate slotted longitudinally, and a tongue having roughened or serrated edges, and pivoted by its central axis in the center of said slot, said guard plate being provided with means for attaching the same to the other end of the belt, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

ELIAS B. KOOPMAN.

Witnesses:

HARRY M. MARBLE,
JANDINE LYNG.

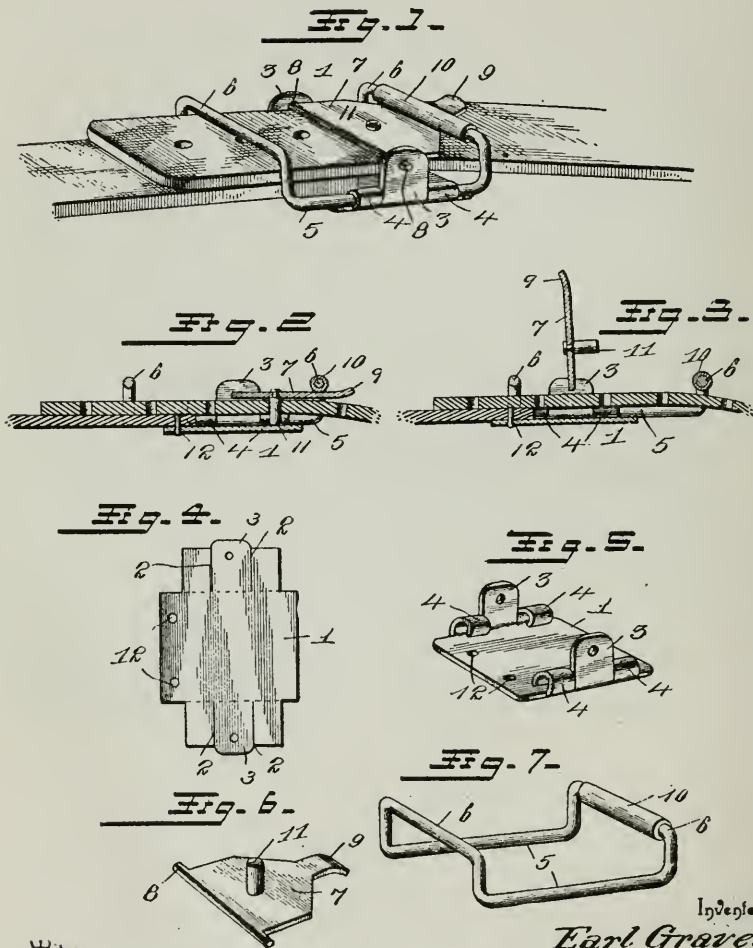
Defendants' Exhibit No. 3—Graves' Patent.

(No Model.)

E. GRAVES.
BUCKLE.

No. 556,413.

Patented Mar. 17, 1896.



Witnesses

H. J. Koerth.
R. M. Smith

By his Attorneys,

Inventor
Earl Graves,
C. A. Snow & Co.

UNITED STATES PATENT OFFICE.

EARL GRAVES, OF KOKOMO, INDIANA.

BUCKLE.

SPECIFICATION forming part of Letters Patent No. 556,413, dated March 17, 1896.

Application filed October 15, 1895. Serial No. 565,777. (No model.)

To all whom it may concern:

Be it known that I, EARL GRAVES, a citizen of the United States, residing at Kokomo, in the county of Howard and State of Indiana, have invented a new and useful Buckle, of which the following is a specification.

This invention relates to an improvement in buckles, and the object in view is to provide a simple, inexpensive, and convenient article of the character referred to, in which a simple locking device is employed, whereby the accidental escape of the tongue from the eye of the strap with which it is in engagement is rendered impossible.

In order to accomplish the object above referred to, the invention consists in certain novel features and details of construction and arrangement of parts, as hereinafter fully described, illustrated in the drawings and finally embodied in the claims.

In the accompanying drawings, Figure 1 is a perspective view of the improved buckle having strap ends secured thereto. Fig. 2 is a longitudinal section taken through the same in line with the tongue, showing the parts in their operative position. Fig. 3 is a view similar to Fig. 2, showing the pivoted tongue-plate thrown back, leaving the strap end free to be removed. Fig. 4 is a plan view of the blank from which the buckle-frame is formed. Fig. 5 is a detail perspective view of the buckle-frame. Fig. 6 is a similar view of the pivoted tongue-plate. Fig. 7 is a similar view of the sliding duplex loop.

Similar numerals of reference designate corresponding parts in the several figures of the drawings.

Referring to the accompanying drawings, 1 designates the buckle-frame, which in the present instance is made from a single sheet-metal blank, approximately square or rectangular in plan, and having parallel slits cut in its side edges, as shown, and forming at each side three small flaps, the intermediate ones of which are bent at substantially right angles to the main body of the buckle-frame and perforated to form bearing-ears 3, which receive the end trunnions or journals of the pivoted tongue-plate, hereinafter described. The remaining flaps upon each side of the perforated ears 3 are bent or curved inward and downward in substantially semi-

circular form to constitute spaced guide-eyes 4, which are adapted to receive the opposite parallel arms of a duplex sliding loop 5.

The duplex sliding loop 5 comprises substantially a rectangular open frame of wire in which the opposite longitudinal arms or bars are arranged in parallelism and slidably mounted in the guide-eyes 4 of the buckle-frame. This slide-loop has its opposite ends deflected substantially at right angles to its side bars so as to locate the transverse end bars 6 at such distance from the buckle-frame as to permit the strap ends to pass between the main body of the buckle-frame and such transverse bars of the slide-loop. This particular construction and arrangement also serve to limit the sliding movements of the duplex loop in each direction.

7 designates the pivoted tongue-plate, which is preferably stamped from a piece of sheet metal and formed in such process with laterally-extending studs or trunnions 8, which enter the perforated ears of the buckle-frame and pivotally connect said tongue-plate therewith, and said plate is further provided with a longitudinally-extending spring-finger 9, which curves slightly away from the tongue-frame and is adapted to be received beneath a roller or sleeve 10, surrounding the transverse bar at the forward end of the slide-loop, when the parts are in operative or locked position. The tongue 11 is riveted or otherwise rigidly connected to the central portion of the plate 7.

The buckle hereinabove described is connected permanently to one end of a strap by means of threads or rivets passing through perforations 12 in the buckle-frame, or in any other convenient manner. The strap end to be temporarily held within the buckle is inserted between the main body of the buckle-frame and the double slide-loop, while the pivoted tongue-plate is thrown back. The desired eye in the strap is then brought into a position near the tongue-plate and the latter is then swung inward so as to project the tongue through the eye of the strap. This being done the duplex slide-loop is drawn back until the sleeve of the forward transverse bar thereof passes over and engages the forwardly-projecting spring-finger of the pivoted tongue-plate, whereupon said slide-loop

will be prevented from accidentally sliding forward through the medium of such spring-finger.

From the foregoing description it will be seen that an extremely simple, inexpensive and durable buckle is formed, and that the same requires in its construction the use of but two small pieces of sheet metal and a single section of wire, while at the same time a thoroughly efficient and reliable buckle is produced.

Changes in the form, proportion and minor details of construction may be resorted to without departing from the spirit or sacrificing any of the advantages of this invention.

Having described the invention, what is claimed as new is—

1. In a buckle, the combination with the buckle-frame and the tongue-plate pivotally connected therewith, of a rectangular slide-loop having its side bars in sliding engagement with the buckle-frame and its end bars deflected laterally so that the strap may pass between the buckle-frame on the one side and both end bars of the loop on the other, whereby the slide-loop is adapted to engage and lock the tongue-plate, substantially in the manner and for the purpose specified.

2. In a buckle, a frame provided at opposite sides with guide-eyes, in combination with a slide-loop mounted to slide within said guide-eyes and provided with a transverse bar, and a tongue-plate pivotally connected with the buckle-frame and adapted to be engaged by said slide-loop, substantially as described.

3. In a buckle, a buckle-frame formed from a sheet-metal blank and having its opposite side edges slitted to form flaps which are bent over and constitute guide-eyes, in combination with a duplex slide-loop mounted to slide within said eyes and provided with front and rear transverse bars, and a tongue-plate pivotally connected with the buckle-frame and having an integrally-formed spring-finger adapted to be engaged by the slide-loop, substantially in the manner and for the purpose described.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in the presence of two witnesses.

EARL GRAVES.

Witnesses:

ED MORROW,
T. C. McREYNOLDS.

Defendants' Exhibit No. 4—Mixer Patent.

No. 672,793.

Patented Apr. 23, 1906.

C. E. MIXER.

CLASP.

(Application filed Sept. 4, 1900.)

(No Model.)

FIG. 1.

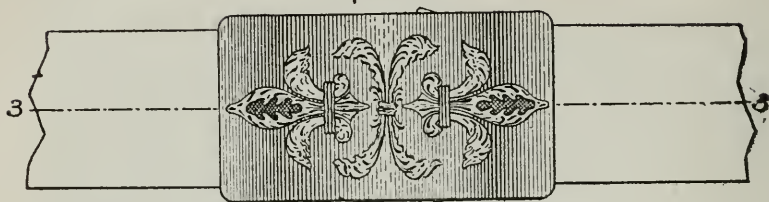
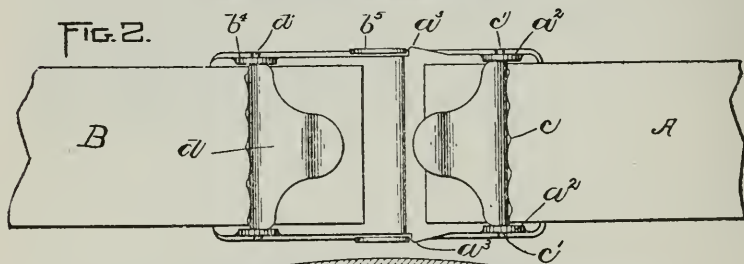


FIG. 2.



*a*¹ FIG. 3.

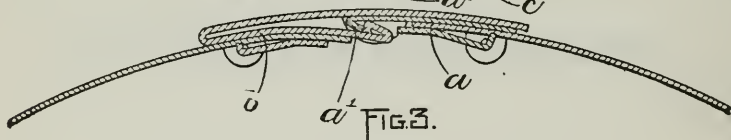
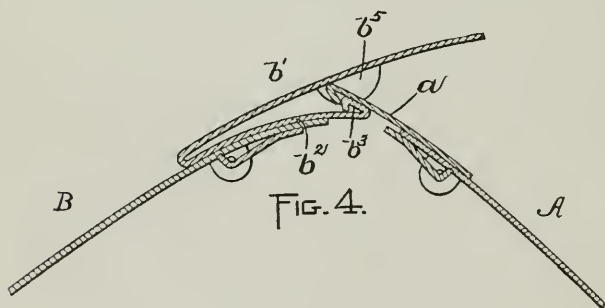


FIG. 4.



WITNESSES.

Fred. E. Dorr.
Esq. at home -

INVENTOR:

Charles C. Muser
by
Bryant Brown Quinby
his atty ~~in fact~~

UNITED STATES PATENT OFFICE.

CHARLES E. MIXER, OF BOSTON, MASSACHUSETTS.

CLASP.

SPECIFICATION forming part of Letters Patent No. 672,793, dated April 23, 1901.

Application filed September 4, 1900. Serial No. 28,885. (No model.)

To all whom it may concern:

Be it known that I, CHARLES E. MIXER, of Boston, in the county of Suffolk and State of Massachusetts, have invented certain new and useful Improvements in Clasps or Fasteners, of which the following is a specification.

This invention has relation to clasps or fasteners, and has for its object the provision of a device of the class named which may be employed for a variety of purposes and which is capable of ornamentation, so as to present a pleasing and ornate appearance when used for securing together the ends of an article of wear, such as a belt or garter or the detachable parts of a pair of suspenders.

In carrying out the invention I employ two members which are adapted to interlock at their meeting ends, one of said members being formed with an outer portion or plate which is adapted to cover and conceal the interlocking body portions of both members. The outer plate is thus adapted for the reception of filigree or for any other ornamentation that it may be found desirable to use.

Referring to the drawings, which represent one embodiment of the invention, Figure 1 represents in front elevation a clasp or fastener as in the form best adapted for use in connection with a belt or garter. Fig. 2 represents a rear view of the same. Fig. 3 represents a section on the line 3 3 of Fig. 1 with the members of the fastener interlocked. Fig. 4 represents a similar section that shows the members in the positions assumed by them when being detached.

Referring to the drawings, the members are designated as a whole by the letters *a* and *b*, respectively. The member *a* (which I term the "latch member" for sake of convenience) consists of a metallic plate curved in the direction of its length and having its front end bent obliquely downward and backward, as at *a'*, to form a wedge-shaped latch. At its side edges the member is provided with lugs or ears *a²* to receive the trunnions *c' c'* of the toothed lever *c*, by which the end *A* of the belt is attached to the under side of said member. The said member *a* is likewise provided with laterally-projecting ears or stops *a³* for a purpose to be described. The member *b* (herein termed the "catch member") consists of an elongated strip of sheet metal, which in

this particular embodiment of the invention is shown as bent upon itself to provide the outer plate *b'* and the base-plate *b²*. The said strip is formed of spring metal, so that when the two plates are separated they have a tendency to spring back to initial position with respect to each other. The outer plate *b'* is much longer than the base-plate *b²*, whereby it is adapted to overlap and cover the member *a* when said members are interlocked. The base-plate *b²* is bent obliquely upward and rearward at its end and then downwardly, as at *b³*, to provide a wedge-shaped catch to interlock with the bent end or latch *a'* on the member *a*. The said plate *b'* is bent in the direction of its length, so that the member *a* can fit snugly against its under side while the plate *b²* is by reason of the formation of the catch bent slightly away from the plate *b'*.

When the catch is resting against the plate *b'*, there is a V-space between them, into which the latch is inserted to wedge the catch outward until it slips behind the same, after which the end of the latch bears against the downwardly-bent portion of the catch and is held from disengagement so long as said members *a* and *b* are drawn or pulled in opposite directions. The plate *b'* of the member *b* bears yieldingly against the member *a* and holds the latch *a'* in engagement with the catch *b³*.

The plate *b'* is provided with the lugs *b⁴* at its edges near its rear end, which lugs correspond to those at *a²*, and in said lugs are journaled the trunnions *d'* of the toothed lever *d*, by which the end *B* of the belt is attached to the member *b*.

The base-plate *b²* is formed with the lugs *b⁵* at its edges between its ends, said lugs serving to guide the latch into engagement with the catch and also serving to prevent a lateral movement of the member *a* when engaged with the member *b*. Said lugs cooperate with the stops *a³* in preventing the member *a* from being inserted too far in the member *b*, as shown in Fig. 2.

I prefer to so construct the fastener that when the latch and catch are in engagement they lie substantially midway between the ends of the plate *b'* of the member *b* and also so that the lugs *b⁵* will cover the said parts and hide them from view.

In interlocking the members it is merely necessary to force the latch of member *a* between the catch *b*² and the plate *b'* of the member *b*, and to detach the said members: the member *a* is swung about the catch *b*² as a fulcrum, causing the latch to force the plate *b'* outwardly or, in other words, to separate the plates *b'* and *b*² far enough to permit the latch to be moved out of engagement with the catch *b*². The said members may be separated, however, by grasping the outer end of member *b* between the thumb and forefinger of one hand and pressing the thumb of the other hand against the member *a* so as to bend the plate *b'* of the member *b* out from the plate *b*² far enough to permit the member *a* to be drawn rearwardly in a straight line outward while resting against the said plate *b'*.

It will be understood that in lieu of the levers *c* and *d* the members *a* and *b* may have other provisions for adjustably securing the ends of the belt or garter thereto. The provision of the elongated plate *b'* of the member *b* furnishes a broad surface, which may be ornamented to a high degree. The plate itself may be embossed or it may be filigreed to suit the individual taste of the wearer.

It is evident that the invention may be used for many purposes. In a minute form it may be employed as a dress-fastener in lieu of hooks and eyes or as a fastener for umbrella- straps, and in enlarged form it may be employed as a clasp for horse-blankets or in many other ways.

Having thus explained the nature of the invention and described a way of constructing and using the same, though without attempting to set forth all of the forms in which it may be made or all of the modes of its use, it is declared that what is claimed is—

1. A clasp or fastener comprising two members with interlocking ends, one of said members having an outer yieldingly connected plate which completely overlaps and conceals the other member when the two members are interlocked, and holds the said members in interlocked engagement.

2. A clasp or fastener comprising two interlocking members, one of which consists of a plate having a latch on its end; and the

other of which consists of a base-plate having a catch on its end, and having an outer plate which yieldingly holds the latch in engagement with the catch and which is adapted to yield outwardly to permit disengagement or detachment of said members, said outer plate having ears which project beyond the end of the catch to guide the latch into engagement therewith.

3. A clasp or fastener comprising two interlocking members, one of which consists of a plate having a latch on its end, and the other of which consists of a base-plate having a catch on its end, and having an outer plate which yieldingly holds the latch in engagement with the catch and which is adapted to yield outwardly to permit disengagement or detachment of said members, said last-mentioned plate being elongated to cover and conceal the latch member when said members are interlocked.

4. A clasp or fastener comprising two interlocking members, one of which consists of a plate bent obliquely downward and rearward at its inner end to form a latch, and the other of which consists of a base-plate bent obliquely rearward and upward at its inner end to form a catch, and a yielding outer plate between which and the base-plate the latch member may be inserted, said outer plate being elongated to overlap and conceal the latch member, whereby a smooth surface is provided for ornamentation purposes.

5. A clasp or fastener comprising a latch member having a wedge-shaped latch at its inner end and a catch member having a wedge-shaped catch at its inner end, and having a yielding outer plate which holds the latch in engagement with the catch, and which is elongated to conceal the body portion of the latch member, each of said members having provisions located on its underface for attachment to the end of a belt or garter.

In testimony whereof I have affixed my signature in presence of two witnesses.

CHARLES E. MIXER.

Witnesses:

C. C. STECHER,
MARCUS B. MAY.

Defendants' Exhibit No. 5—Goldsmith Patent.

(No Model.)

M. T. GOLDSMITH.
BELT BUCKLE.

No. 577,850.

Patented Mar. 2, 1897.

Fig. 1.

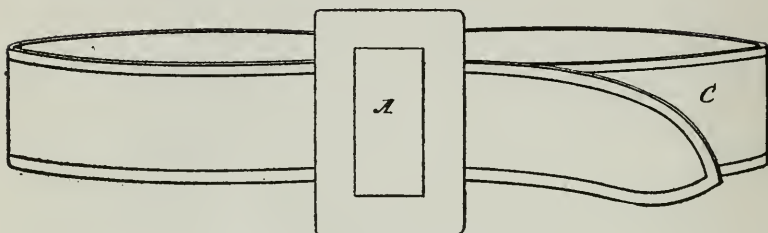


Fig. 2.

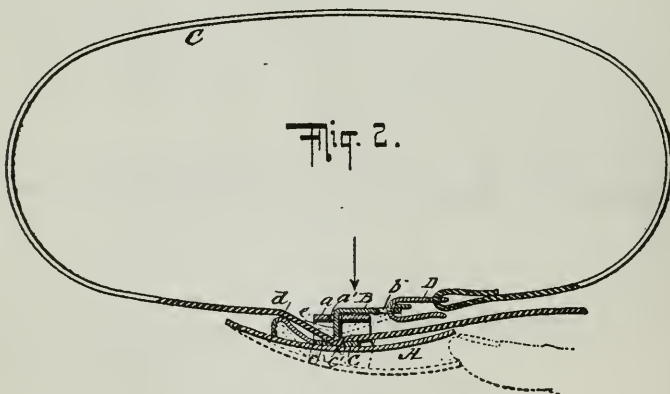
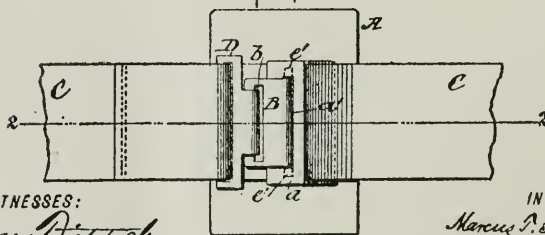


Fig. 3.



WITNESSES:

Gustave Pieter, ch.
John Kehlbeck.

INVENTOR

Marcus T. Goldsmith,
BY *H. A. West*

ATTORNEY.

UNITED STATES PATENT OFFICE.

MARCUS T. GOLDSMITH, OF NEW YORK, N. Y.

BELT-BUCKLE.

SPECIFICATION forming part of Letters Patent No. 577,850, dated March 2, 1897.

Application filed May 12, 1896. Serial No. 591,243. (No model.)

To all whom it may concern:

Be it known that I, MARCUS T. GOLDSMITH, a citizen of the United States, and a resident of New York, in the county of New York and State of New York, have invented certain new and useful Improvements in Belt-Buckles, of which the following is a specification.

My invention relates to a new belt-buckle in which the belt is adjusted by having one end thereof drawn through the main body or member of the buckle, the two main members of the buckle being constructed to firmly hold the belt without defacing the same and in such a manner that the belt may be released by pulling outward upon one edge of the main outer member or plate of the buckle.

Reference is to be had to the accompanying drawings, in which—

Figure 1 is a perspective view of a belt having my new buckle applied thereto. Fig. 2 is a sectional plan view of the belt and buckle on line 2 2 of Fig. 3, showing in dotted lines the method of releasing the belt from the buckle; and Fig. 3 is a rear elevation of the buckle and ends of the belt.

A represents the main plate or outer member of the buckle, B the inner or complemental member or clasp, and C the belt, one end of which is connected to the member B by a hook D, which enters a slot *b* in the inner member B or by being sewed or otherwise connected to said inner member.

The main plate or member A of the buckle may be of any desired ornamental design, outline, or configuration, and is curved, as shown in Fig. 2, to conform to the body of the wearer. It is provided at the back with a permanent keeper or loop *a*, in which a slot *a'* is formed, and beneath or in front of said keeper the main plate is formed or provided with ribs *c*, which are separated to form a narrow space or channel *c'* between their adjacent surfaces or edges, as shown clearly in Fig. 2. The plate A is also formed or provided at the back with a breast *d*, against which the belt acts by pressure of the body when on the person for automatically turning the plate A to the position shown in full lines in Fig. 2.

The inner member or clasp B is bent at an angle to form the jaw *e*, which latter is extended at its ends to form notches or shoulders *e' e'* for holding the part B in the slot *a'*,

as shown in dotted lines in Fig. 3. The jaw *e* is made of such width relative to the space between the keeper *a* and the back of the plate A or space *c'* therein that when the belt is in place and the outer portion of the member B closed down flat, as shown in Fig. 2, it will bend the material of the belt out into the space *c'* between the ribs *c*, as shown clearly in said figure, and thus hold the belt without injury. When the member B is in the said last-mentioned position and the belt is on the person, the sharp angle formed in the belt by the jaw and the said ribs causes the belt to be firmly held, and this position is maintained by the pressure of the belt against the breast-piece *d*.

When it is desired to remove the belt, it is only necessary to pull outward the edge of the plate A, as shown in dotted lines in Fig. 2, whereupon the rib *c* nearest said edge will swing around the edge of the jaw *e* and thus release the belt.

In adjusting the belt to make it more or less tight upon the body the wearer has simply to swing the plate A outward, as just described, and draw the belt through or let it slip back, as the case may be, and release the plate, whereupon the pressure on the breast *d* will automatically force the plate A back to its normal position, causing the jaw *e* to again firmly clasp and hold the belt, as above described.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. As a new article of manufacture, a belt-buckle comprising the main plate A, provided at the back with a keeper *a*, and the parallel ribs *b*, forming a channel coincident with the slot *a'*, in the said keeper, and having a breast-piece *d*, at one side of the keeper, in combination with the clasp B, fulcrumed in said keeper at a point in a plane intermediate of the said ribs *c*, and formed with a jaw *e*, of a width relative to the width of the space between the main plate and the keeper to adapt one of the said ribs to clear the edge of the jaw when the main plate A is moved slightly outward at one edge; substantially as described.

2. In a belt-buckle the main plate A, having the slotted keeper *a*, rigidly secured to

the back thereof and also having the parallel ribs *c c*, rigidly secured to the back of said main plate so as to form a channel coincident with the slot *a'* in the said keeper *a*, in combination with the clasp *B* fulcrumed in said slot *a'*, at points in a plane intermediate of the said ribs *c c*, and formed with a jaw *e*, of a width relative to the width of the space between the main plate and the keeper *a* to adapt the ribs *c* to clear the edge of the jaw when the main plate *A* is moved slightly outward at one edge; substantially as and for the purposes described.

MARCUS T. GOLDSMITH.

Witnesses:

H. A. WEST,

R. GUTHMAN.

Defendants' Exhibit 6, Latta Patent.

E. G. LATTA.
Trace-Buckle.

No. 205,715

Patented July 2, 1878

Fig. 1.

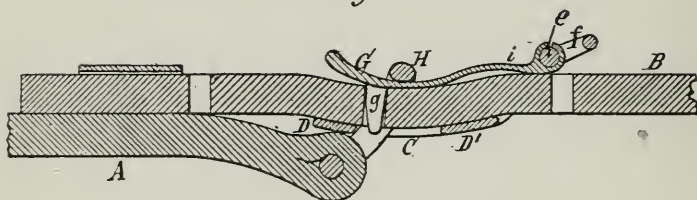


Fig. 2.

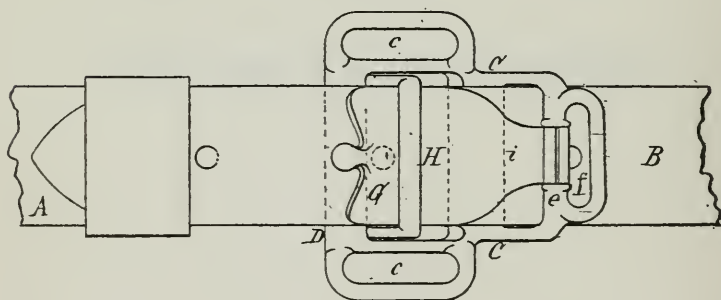
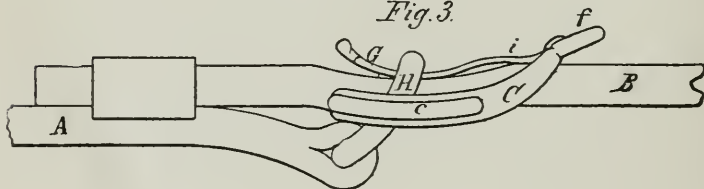


Fig. 3.



Charles J. Buchbult
John Tyler

Witnesses

E. G. Latta Inventor
by William H. Bennett
Attorney

UNITED STATES PATENT OFFICE.

EMMIT G. LATTA, OF FRIENDSHIP, ASSIGNOR OF ONE-HALF HIS RIGHT
TO HARVEY D. BLAKESLEE, OF BUFFALO, NEW YORK.

IMPROVEMENT IN TRACE-BUCKLES.

Specification forming part of Letters Patent No. 205,715, dated July 2, 1878; application filed
December 13, 1877.

To all whom it may concern:

Be it known that I, EMMIT G. LATTA, of Friendship, in the county of Allegany and State of New York, have invented a new and useful Improvement in Trace-Buckles, of which the following is a specification, reference being had to the accompanying drawings.

My invention relates to that class of trace-buckles in which a tongue-plate is employed, which is held in contact with the trace by a bail or loop attached to the hame-tug.

The object of my invention is the construction of a simple and strong buckle which permits the ready adjustment of the trace, relieves the tongue from strain, and the trace from undue compression, and which enables traces of different thicknesses to be used with the same buckle.

My invention consists of the particular construction of the device, as hereinafter fully set forth.

In the accompanying drawing, Figure 1 is a horizontal section of my improved buckle. Fig. 2 is a side elevation, and Fig. 3 a top-plan view thereof.

Like letters of reference refer to like parts in each of the figures.

A represents the hame-tug, and B the trace. C C represent the side bars of the buckle frame, provided in the usual manner with loops *c c*. D D' represent the flat cross bars of the buckle frame, forming the back or bed of the buckle. The cross-bars D D' are curved in the longitudinal direction of the buckle, as clearly shown in Fig. 1, so as to form an open concave bed for the trace.

e represents the upper rear cross-bar of the buckle, under which the trace passes, and *f* the loop formed with the cross bar *e* in the usual manner. G is the tongue-plate, hung with its rear end to the cross-bar *e*, and *g* the tongue formed on the under side of the plate G, near its front end. The tongue-plate G is made convex on its under side, so as to press the trace tightly into the open space between the two cross-bars D D', which form the concave bed of the buckle. The tongue-plate G is curved upward above the rear cross-bar D', as clearly shown in Fig. 1, to prevent

the plate from pressing the trace against this cross-bar.

H is the swinging bail hung to the rear end of the hame-tug A, so as to bear upon the tongue-plate G, the side pieces of the bail playing in recesses or depressions on the inner side of the side pieces C of the buckle. The rear end *i* of the tongue-plate, by which the plate is connected with the cross bar *e*, is cast with open jaws, so as to straddle the cross-bar. After annealing the parts the open jaws of the rear end *i* of the tongue-plate are applied to the cross-bar *e* and closed by pressure, forming what is termed a "cold shut," whereby the tongue-plate is securely connected to the buckle-frame in a very simple and durable manner.

The convex form of the tongue-plate G enables the buckle to hold traces of different thicknesses with equal security, which would not be the case with a flat tongue plate pivoted to the rear end of the buckle-frame. The convex form of the tongue-plate also serves to force the trace into the open space between the cross-bars D D', thereby securely holding the trace in place and relieving the tongue *g* to a great extent from the strain of the trace.

In my improved buckle the trace itself is not clamped at any point between two metallic surfaces, and thereby saved from undue compression and too rapid wear.

My improved buckle is readily and cheaply constructed of malleable iron, and very durable, and it is easily adjusted when in use.

I claim as my invention—

The combination, with the bail H attached to the hame-tug, of a buckle frame provided with an open concave bed, D D', and the tongue-plate G *g* pivoted to the rear part of the buckle frame and curved upward to clear the rear cross-piece D', and then curved down to press the trace into the open space between the cross-bars D D', substantially as and for the purpose set forth.

EMMIT G. LATTA.

Witnesses:

SAMUEL L. KING,
SAM'L. LATTA, JR.

Defendants' Exhibit No. 9, Bliss Patent.

W. B. BLISS.

BUCKLE.

APPLICATION FILED APR. 17, 1911.

1,034,681.

Patented Aug. 6, 1912.

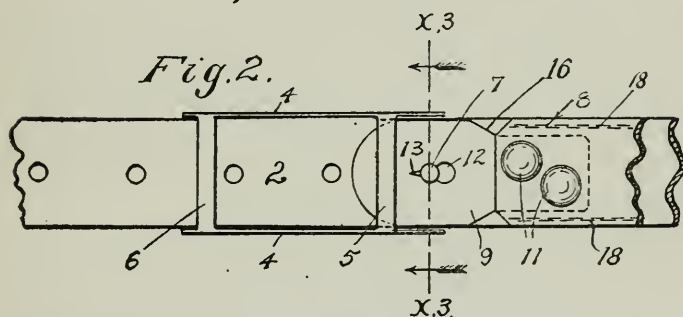
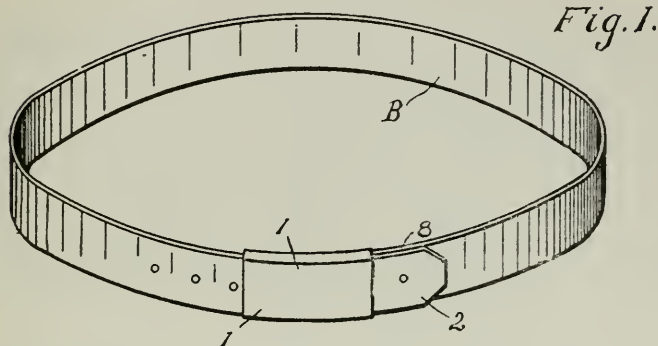


Fig. 3.

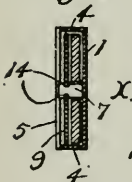


Fig. 4.

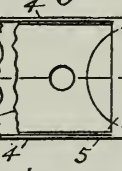
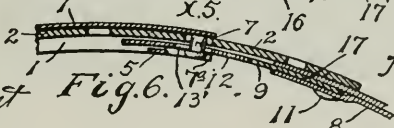
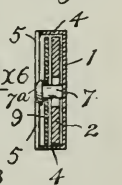


Fig. 5.



Witnesses:
H. H. Hunt
J. H. Gorman

Inventor:
Walter B. Bliss
Valbert H. Merrill
atty.

UNITED STATES PATENT OFFICE.

WALTER B. BLISS, OF LOS ANGELES, CALIFORNIA.

BUCKLE.

1,034,681.

Specification of Letters Patent.

Patented Aug. 6, 1912.

Application filed April 17, 1911. Serial No. 621,687.

To all whom it may concern:

Be it known that I, WALTER B. BLISS, a citizen of the United States, residing in the city of Los Angeles, State of California, have invented a new and useful Buckle, of which the following is a specification.

Objects of this invention are to provide a very inexpensive and simple buckle adapted to be used for an ornamental belt buckle, and also adapted to serve as an improved article for the general uses to which buckles may be applied.

Referring to the accompanying drawings, which illustrate the invention, Figure 1 is a perspective view of a belt for use in connection with wearing apparel, provided with my newly invented buckle, showing the same in use as a means for connecting together the ends of the belt, the fastening parts not being moved quite to the fully fastened position; Fig. 2 is a view looking toward the inner face of the buckle and showing the end portions of the belt fastened to said buckle; Fig. 3 is a cross section on line x^3 of Fig. 2; Fig. 4 is a view similar to Fig. 2 showing a modified form of the buckle; Fig. 5 is a cross section on line x^5 of Fig. 4; Fig. 6 is a longitudinal mid-section on line x^6 of Fig. 4.

In the structure disclosed, a buckle body 1 is employed, which is provided along its opposite side edges with rearwardly extending flanges 4, forming an open-ended guideway having an open rear side. Connecting the rear edges of the flanges 4 are transverse bars or keepers 5 and 6, the keeper 5 being located some distance from the adjacent end of the body. The said buckle body is preferably curved, as illustrated in Fig. 6. From said buckle body a stud 7 projects toward the side thereof which is provided with said keepers, said stud extending through the end portion 2 of the belt and being located in advance of the keeper 5 and spaced away therefrom a short distance, as shown. To the other end portion 8 of the belt is attached a plate 9, preferably by means of rivets 11. Said plate 9 has an aperture therethrough, said aperture having a larger portion 12 and a tapered or diminished portion 13 (or 13') projecting toward the end of said plate 9. The stud 7, in the form of the invention shown in Figs. 2 and 3, is recessed or cut away at each side at 14, as best shown in Fig. 3. The larger portion

12 of the aperture of the plate 9 readily passes over the stud 7, but the diminished portion 13 of said aperture may be drawn into contact with the diminished or grooved portion of the stud to fasten the parts together.

It will be understood that the end portion of plate 9 will first be obliquely inserted under the keeper 5, there being a slight space between said keeper and the section of the connection embraced by the clip 1, and the plate 9 will be brought down upon the stud 7 so as to bring said stud through the larger portion of the opening through the plate, and then the same may be brought into engagement with the contracted portion 13 of the opening to fasten the parts together.

The bar or keeper 5 is located at a little distance from the end of the clip 1, the stud 7 occupying an unobstructed position nearer the end of the clip. I am aware that it is not new to place a keeper on each side of the retaining stud, and my invention is an improvement over such a construction by reason of permitting the fastening elements to be more quickly coupled together, there being fewer parts to obstruct the quick fastening of the plate 9. By this invention, both the keepers are located on the same side of the retaining stud.

In Figs. 4 and 5 the stud 7 is shown provided with a head 7' which avoids the necessity of the recesses 14 shown in Fig. 3, and the aperture through the plate is not V-shaped, but is provided with a narrower portion 13' which passes astride the stud beneath the head thereof. It will therefore be seen that, in both forms of the invention, the stud is provided intermediate its base and outer end with a portion of diminished cross-sectional extent which the edges of the narrower portion of the opening through the plate 9 engage to keep the parts in the fastened position.

The belt is provided with a series of holes 15 to receive the stud 7. After the belt has once been adjusted by inserting the stud 7 through the desired hole 15, the belt may be put on and quickly fastened at the desired point without further adjustment.

The apertured plate 9 is desirably reduced in width at the points lettered 16. Said plate is thus provided with a tail-piece 17 which is narrowed down to pass between the

2

1,034,681

stitching 18 and is riveted within the split end of the belt to give a neat appearance to the article.

I claim:

3. The combination with a buckle body comprising a plate having rearwardly extending flanges forming an open-ended guideway having an open rear side, a cross bar connecting the rear edges of the flanges and located in spaced relation to the adjacent end of the body, and a rearwardly extending stud located in the guideway between the cross bar and the said adjacent end of the body, of a belt having one end slidably extending into one end of the guideway and provided with a series of openings, any one of which is arranged to detachably receive the stud and thereby adjustably secure the said end of the belt to the body, and a metal

plate secured to the other end of the belt, said plate adapted to be inserted behind the cross bar and over the first mentioned end of the belt, and said plate furthermore being provided with a socket or opening to cooperate with the end of the stud over the first mentioned end of the belt to lock the plate in place, and thereby secure both ends of the belt to the buckle body.

In testimony whereof I have hereunto signed my name in the presence of two subscribing witnesses at Los Angeles, in the county of Los Angeles and State of California, this 11th day of April 1911.

WALTER B. BLISS:

Witnesses:

ALBERT H. MERRILL,
LILLIAN YOUNG.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS et al.,

Defendants.

Stipulation [of Facts].

FOR INFRINGEMENT OF LETTERS PATENT.

It is hereby stipulated and agreed by and between the solicitors and counsel of the complainant and the defendants, Walter B. Bliss and Fresno Monogram Adjustable Buckle Company, that the defendant, Walter B. Bliss, is the patentee Walter B. Bliss of United States Letters Patent Number 1,034,681, for Buckles, issued August 6, 1912, on application filed April 17, 1911; that said letters patent are owned by the defendant Fresno Monogram Adjustable Buckle Company and were by it owned at the times that the buckles constituting the buckles of Complainant's Exhibit "E," Defendants' Buckle, and Complainant's Exhibit "F," Defendant's Buckle," exhibits in this case, and other such buckles, were manufactured and sold by the defendant Fresno Monogram Adjustable Buckle Company as admitted by said defendant on the record in this case; and that defendant Walter B. Bliss

made one or more of such buckles substantially as disclosed in said letters patent Number 1,034,681, and subsequent to the date of issuance of the Spangler patent in suit, and that said Bliss since the issuance of the Spangler patent in suit has been in the employ of, or by contract related with, or a stockholder in, said Fresno Monogram Adjustable Buckle Company, in connection with making and selling such buckles.

Dated April 15, 1913.

RAYMOND IVES BLAKESLEE,
Solicitor and Counsel for Complainant.
NEIGHBOURS, SPROUL & HOAG,
Solicitor and Counsel for Defendants.
WALTER B. BLISS,
G. E. HARPHAM,

Solicitor and Counsel for Defendant, Fresno Monogram Adjustable Buckle Company [70]

[Endorsed]: In Equity. No. 209—Civil. In the United States District Court, Southern District of California, Southern Division. George P. Spangler, Complainant, vs. Walter B. Bliss et al. Defendants. Stipulation. Filed Jul. 3, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Raymond Ives Blakeslee, Solicitor and Counsel for Complainant, 728-29-30 California Bldg., 2d St. & S. Broadway, Los Angeles, Cal. [71]

[Petition for Appeal.]

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS, FRESNO MONOGRAM AD-
JUSTABLE BUCKLE COMPANY, and
MODERN SALES AGENCY OF AMERICA,
LIMITED,

Defendants.

Walter B. Bliss and Fresno Monogram Adjustable Buckle Company, a corporation, two of the defendants in the above-entitled cause, considering themselves aggrieved by the Interlocutory Decree or order entered in said cause on August 4th, 1913, decreeing the letters patent sued on herein are valid and that defendants infringed the same and awarding an injunction and other relief, hereby appeal from said decree and decision and from the whole thereof to the Circuit Court of Appeals for the 9th Circuit for the reasons specified in the assignment of errors which is filed herewith, and they pray that their appeal be allowed and that a citation issue as provided by law and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Cir-

cuit sitting at San Francisco, Cal.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

G. E. HARPHAM,
Solicitor for Fresno Monogram *Adjust* Buckle Company.

NEIGHBOURS, SPROULE & HOAG,
Solicitors for Walter B. Bliss. [72]

[Endorsed]: 209—Civil. U. S. District Court, So. Dist. Cal., So. Div. G. P. Spangler vs. W. B. Bliss et al. Petition for Appeal etc. Filed September 2, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [73]

In the United States District Court, Southern District of California, Southern Division.

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS, FRESNO MONOGRAM ADJUSTABLE BUCKLE COMPANY, and
MODERN SALES AGENCY OF AMERICA,
LIMITED,

Defendants.

Assignment of Errors.

1. The Court erred in holding that there was a joint infringement by Walter B. Bliss, Fresno Mon-

ogram Adjustable Buckle Company and Modern Sales Agency of America, Limited, of the letters patent sued on in this action.

2. The Court erred in entering a decree in favor of complainant.

3. The Court erred in finding and decreeing that the letters patent sued on are good and valid in law.

4. The Court erred in finding and decreeing that the buckles exhibits "E" and "F" were an infringement of the letters patent sued on herein.

5. The Court erred in holding and finding that the anticipating patents did not constitute an anticipation of the claim of the patent sued on herein.

6. The Court erred in holding that the anticipating patents did not limit complainant's patent to the exact construction set forth therein and in the claim thereof and as so limited that the buckles exhibits "E" and "F" infringed said letters patent and the claim thereof.

G. E. HARPHAM,

Solicitor for Fresno Monogram Adjustable Buckle Co.

NEIGHBOURS, SPROUL & HOAG,

Solicitors for Walter B. Bliss. [74]

[Endorsed]: 209—Civil. U. S. District Court, So. Dist. Cal., So. Div. G. P. Spangler vs. W. B. Bliss et al. Assignment of Errors on Appeal. Filed September 2, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [75]

*In the United States District Court, Southern
District of California, Southern Division.*

IN EQUITY.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS, FRESNO MONOGRAM AD-
JUSTABLE BUCKLE COMPANY, and
MODERN SALES AGENCY OF AMER-
ICA, LIMITED,

Defendants.

**Order Allowing Appeal and Fixing Amount of
Undertaking.**

In this action it appearing that the Modern Sales Agency of America, Limited, one of the defendants herein, has been duly notified to appear and join in the appeal of the other defendants to the Circuit Court of Appeals for the 9th Circuit and that said defendant has refused to join in the appeal. Now, on motion of the solicitors for the other defendants, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Interlocutory Decree heretofore entered August 4, 1913, on behalf of the defendants Walter B. Bliss and the Fresno Monogram Adjustable Buckle Company be and the same is hereby allowed as to their and each of their *interest* and that a certified transcript of such parts of the record, testimony,

exhibits and all proceedings herein as are specified as material be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit, together with the mechanical exhibits. It is further ordered that the bond on appeal be fixed at \$250.00; to be filed within ten days and to be approved by the Court.

OLIN WELLBORN. [76]

[Endorsed]: No. 209—Civil. U. S. District Court, Southern District of California, Southern Division. G. P. Spangler, Compl't., vs. W. B. Bliss et al., Defts. Order Allowing Appeal and Fixing Amount of Bond. Filed September 2, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [77]

[Stipulation as to Record on Appeal.]

*In the United States District Court, Southern
District of California, Southern Division.*

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS et al.,

Defendants.

It is hereby stipulated that in making up the record on appeal in the above-entitled action the Clerk shall include in the record the following papers and no others, to wit:

The bill of complaint as amended to include the Fresno Monogram Adjustable Buckle Company.

The respective answers of the Fresno Monogram Adjustable Buckle Company and Walter B. Bliss.

The Interlocutory Decree.

The petition for and order allowing the appeal.

The assignment of errors.

The condensed statement of evidence as settled, together with all exhibits.

The stipulation of April 15th, 1913.

That in copying the above papers the headings of all documents except the bill of complaint shall be omitted and they shall be entitled as follows (heading omitted, being same as bill), and then give name of document.

All endorsements shall be as follows:

Service shall be "duly served" with the date.

Filing shall be "duly filed" with date of filing.

Dec. 26th, 1913.

RAYMOND IVES BLAKESLEE,

Solicitor for Complainant,

NEIGHBOURS, SPROUL & HOAG and

G. E. HARPHAM,

Solicitors for Defendants.

[Endorsed]: No. 209—Civil. U. S. District Court, Southern District [78] of California, Southern Division. George P. Spangler, vs. Walter B. Bliss et al. Stipulation as to Record on Appeal. Filed Dec. 26, 1913. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy Clerk. [79]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 209—CIVIL.

GEORGE P. SPANGLER,

Complainant,

vs.

WALTER B. BLISS and FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY,
Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing seventy-nine (79) typewritten pages, numbered from one (1) to seventy-nine (79), inclusive, to be a full, true and correct copy of the Bill of Complaint, Answer of Walter B. Bliss, Answer of Fresno Monogram Adjustable Buckle Company, Interlocutory Decree, Abstract of Testimony, Complainant's Exhibit "A," Defendants' Exhibits 1, 2, 3, 4, 5, 6, and 9, Stipulation of April 15, 1913, Petition for Appeal, Assignment of Errors, Order Allowing Appeal and for transmission of original exhibits, in the above and therein entitled cause, and that the same together constitute the record in said cause, as specified in the Stipulation as to the Record, filed in my office on behalf of the respective parties by

their attorneys of record; excepting therefrom Complainant's Exhibit "C," Spangler Buckle; Complainant's Exhibit "D," Altered Spangler Buckle; Complainant's Exhibit "E," Defendants' Buckle; Complainant's Exhibit "F," Defendants' Buckle; Complainant's Exhibit "H," Paper Model; Defendants' Exhibit 1, Buckle; Defendants' Exhibit 10, Buckle; which said original exhibits are by order of Court transmitted herewith and made a part hereof.

[80]

I do further certify that the cost of the foregoing record is \$37 10/100, the amount whereof has been paid me by the defendants in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 13th day of January, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence, the one hundred and thirty-eighth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States, in
and for the Southern District of California.

[81]

[Endorsed]: No. 2370. United States Circuit Court of Appeals for the Ninth Circuit. Walter B. Bliss and Fresno Monogram Adjustable Buckle Company, a Corporation, Appellants, vs. George P. Spangler, Appellee. Transcript of Record. Upon Appeal from the United States District Court for

the Southern District of California, Southern Division.

Received and filed January 14, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Order Extending Time to January 1, 1914, to File
Record on Appeal.]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern Dis-
trict of California.*

No. 209—CIVIL.

Clerk's Office.

GEO. P. SPANGLER,

vs.

WALTER B. BLISS et al.

Good cause appearing therefor, it is hereby ordered that the time for appellants W. B. Bliss and the Fresno Monogram Adjustable Buckle Co. to file the record in said cause on appeal and to docket said cause in the appellate court be and the same is hereby extended to January 1st, 1914.

October 14th, 1913.

OLIN WELLBORN,
Judge.

[Endorsed]: No. ——. U. S. Circuit Court of Appeals, Ninth Circuit. Walter B. Bliss et al., Ap-

pellants, vs. George P. Spangler, Appellee. Order Enlarging Time to File Record. Filed Oct. 17, 1913. F. D. Monckton, Clerk.

[Order Enlarging Time to February 1, 1914, to Docket Cause and File Record Thereof on Appeal.]

*In the United States Circuit Court of Appeals,
Ninth Judicial Circuit.*

WALTER B. BLISS and FRESNO MONOGRAM
ADJUSTABLE BUCKLE COMPANY,
Appellants,

vs.

GEO. P. SPANGLER,

Appellee.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellants to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of February, 1914.

Dated at Los Angeles, December 24th, 1913.

OLIN WELLBORN,
United States District Judge, for the Southern District of California.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Walter B. Bliss et al., Appellants, vs. Geo. R. Spangler, Appellee. Order Extending Time to Docket Record. Filed Dec. 27, 1913. F. D. Monckton, Clerk.

No. 2370. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to February 1, 1914, to File Record Thereof and to Docket Case. Refiled Jan. 14, 1914. F. D. Monckton, Clerk.

5
No. 2370.

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Walter B. Bliss and Fresno Mono-
gram Adjustable Buckle Com-
pany, a corporation,

Appellants,

vs.

George P. Spangler,

Appellee.

APPELLANTS' OPENING BRIEF.

STATEMENT OF THE CASE.

This is an appeal from an interlocutory decree awarding an injunction.

Appellee Spangler on November 4, 1912, filed his bill of complaint in the lower court against Walter B. Bliss, Fresno Monogram Adjustable Buckle Co., a corporation, and Modern Sales Agency of America, Limited, a corporation, defendants. The bill is in the usual form, charging that the defendants *jointly* infringed United States letters patent No. 972,937, issued to appellee Spangler October 18th, 1910, for a buckle for belts, hereafter called the Spangler patent. The Modern

Sales Agency made default and a decree *pro confesso* was entered against it. Defendant Bliss answered and denied infringing jointly or severally. The Fresno Monogram Adjustable Buckle Co., hereafter referred to and called the Buckle Co., answered and denied all the allegations of the bill and set up as an anticipation certain United States letters patent hereafter referred to. Testimony was taken and the cause was argued and submitted to the court for decision. The court decided the case in favor of appellee and entered its interlocutory decree holding that the patent sued on was valid and holding that *all* the defendants *jointly* infringed by the manufacture, use and sale of certain buckles and that they intend and threaten to continue such infringement, and awarded an injunction against the manufacturing of certain buckles. The defendants Bliss and the Buckle Co. duly filed their appeal from said interlocutory decree and assigned the following errors, upon which they relied for a reversal of the decree [found on pages 93 and 94 Transcript], to-wit:

ASSIGNMENT OF ERRORS.

1. The court erred in holding that there was a joint infringement by Walter B. Bliss, Fresno Monogram Adjustable Buckle Company and Modern Sales Agency of America, Limited, of the letters patent sued on in this action.

2. The court erred in entering a decree in favor of complainant.

3. The court erred in finding and decreeing that the letters patent sued on are good and valid in law.

4. The court erred in finding and decreeing that the buckles exhibits "E" and "F" were an infringement of the letters patent sued on herein.

5. The court erred in holding and finding that the anticipating patents did not constitute an anticipation of the claim of the patent sued on herein.

6. The court erred in holding that the anticipating patents did not limit complainant's patent to the exact construction set forth therein and in the claim thereof and as so limited that the buckles exhibits "E" and "F" infringed said letters patent and the claim thereof.

POINTS AND AUTHORITIES.

I.

The first assignment of error is in holding that there was a joint infringement by the defendants. There is no testimony whatever that the Modern Sales Agency of America ever made or used or sold any buckles of any kind or character or that they ever threatened so to do.

There is no testimony that the defendant Bliss made or used or sold any buckles in his individual capacity after the patent sued on was issued that were an infringement of said patent unless the making of one or more buckles substantially as disclosed in United States letters patent No. 1,034,681, issued to said Bliss August 6, 1912, for a buckle, constitutes an infringement. A stipulation as to the defendant Bliss' connection was entered into April 15th, 1913, and is found on pages 90 and 91 of the record. In said stipulation it is stipulated that Bliss is the patentee named in said

patent No. 1,034,681; that said patent was owned by the Buckle Co. at the time the buckles held to be an infringement of Spangler's patent were manufactured and sold by the Buckle Co.; that Bliss made one or more buckles substantially as disclosed in said patent No. 1,034,681, hereafter called the Bliss patent, since the Spangler patent was issued, and that since the Spangler patent was issued Bliss "has been in the employ of, or by contract related with, or a stockholder in said Fresno Monogram Adjustable Buckle Co., in connection with making and selling such buckles."

As the buckle made by Bliss was made in accordance with the United States patent issued to him, the presumption is that it did not infringe.

The granting of a patent for a device similar to the one covered by a prior patent is *prima facie* evidence that there is a substantial difference between the two.

Corning v. Burden, 15 How. 252, 14 L. C. P. 283;

Miller v. Eagle Mfg. Co., 151 U. S. 190, 38 L. C. P. 121-131;

Gillette Safety R. Co. v. Durham D. R. Co., 197 Fed. 575, and large number of authorities cited;

General Electric Co. v. Allis-Chalmers Co., 197 Fed. 558;

Byerley v. Standard A. & R. Co., 189 Fed. 759.

By no possible construction can said stipulation be construed to establish a *joint* making, or joint use, or joint sale of a buckle by Bliss in conjunction with the

other defendants. The stipulation does not establish the doing of any act by Bliss that constitutes an infringement of the Spangler patent. If the Bliss buckle could be held to be an infringement of the Spangler patent (which we submit it could not), Bliss' connection with the Buckle Co. as an employee or a stockholder in connection with the making and selling of such buckle would not render him liable to be sued individually. The making of one such buckle at some time after the issue of the Spangler patent and before April 15th, 1913, would not establish a right as against Bliss to an injunction. *Non constat* all the acts of Bliss set forth in the stipulation about making and selling such buckles may have occurred after the bill of complaint was filed and before April 15th, 1913. For these and other reasons urged on behalf of the Buckle Co. the interlocutory decree is clearly wrong as to defendant Bliss. It is also wrong as to all the defendants, because there was no *joint* infringement established. If the testimony discloses any infringement (which we contend it does not) it is a sole infringement by the Buckle Co., and that would not support a decree of *joint* infringement against all.

If a defendant has, before suit brought, abandoned the manufacture and sale of the infringing machine, and the court is satisfied that the abandonment was in good faith and final, the injunction ought to be refused and the bill dismissed.

Kennicott W. S. Co. v. Bain, 185 Fed. 520.

II.

The second error, that "The court erred in entering a decree in favor of complainant, and the third error, that "The court erred in finding and decreeing that the letters patent sued on are good and valid in law," and the fifth error, that "The court erred in holding and finding that the anticipating patents did not constitute an anticipation of the claim of the patent sued on herein," will be discussed under one head.

In discussing these errors it is of prime importance to ascertain what the invention set forth and covered by the Spangler patent is alleged to be and to determine whether there is any patentable invention set forth in the Spangler patent. A copy of the Spangler patent is found on pages 60 to 63 of the record. At folios 29 to 35, page 61, Spangler states his invention to "consist in the novel provision, construction, formation, combination and association of parts, members and features all as hereafter described, shown in the drawing and finally pointed out in the claim." Spangler describes his buckle as consisting of two members or parts, A and B, respectively, which are applied to the end portions of a belt. The part A comprises a plate or shield 6. This plate has lateral rearwardly extending spaced flanges 7 which are connected at the edges at one end by a cross bar 8. The other ends are connected by a bar 9. On bar 9 is mounted a plate 10 by a knuckle 11 which embraces bar 9. The outer end of plate 10 terminates in a curved lip 12 which forms a hook. On plate 10 is a stud 13 that projects toward shield 6 when in use. This stud enters a hole made in the end

of the belt and holds it from movement relative to the shield when the belt is worn and holds the end of the belt connected to the shield through the plate or tongue upon which it is mounted. The other element B consists of a spring tongue 15 secured to the other end of the belt. Tongue 15 has a transverse slot 19. Two methods of securing tongue 15 to the end of the belt are described. The manner of connecting the ends of the belt is to pass tongue 15 under bar 8 and over hook 12 until slot 19 registers with the hook, when the tongue springs over the hook and the parts are engaged. The claim covers the following elements: 1 A shield with a rearwardly disposed bar spaced therefrom 2 holding means for connecting the shield with a strap and 3 interlocking elements, one of said interlocking elements being connected with said shield rearwardly thereof, and 4 holding means for connecting the other interlocking element with a strap. Then follows a description of what these interlocking elements consist, as follows: "One of said interlocking elements consisting of a spring tongue provided with an opening adapted to be passed between the shield and bar, and the other interlocking element being formed for hook engagement with said spring tongue through said opening." [See claim, folio 8 *et seq.*, page 63.]

It will be observed that no claim is made for the rearwardly projecting flanges on the shield. In order to show that there was no novelty in the combination of parts specified in the claim certain United States patents were introduced in evidence. Spangler's first element is "a shield with a rearwardly disposed bar

spaced therefrom." Patent to Busch, 1872, found on pages 65-6, shows and describes a shield with a rearwardly disposed bar spaced therefrom. Spangler's second element is "holding means" for connecting the shield with a strap. Busch, Koopman, 1895 [p. 68], Mixer, 1901 [p. 76], and Goldsmith, 1897 [p. 80], all show holding means for connecting the shield with the belt. Spangler's third element is "interlocking elements, one connected to the shield and the other to other end of the belt." All of said patents show interlocking elements designed for and effecting the same purposes as Spangler's interlocking elements. It is true that the spaced bar and the interlocking elements of the Busch, Koopman, Mixer and Goldsmith buckles are different in form from Spangler's elements, but they are all designed for and accomplish the same purpose in substantially the same way as Spangler's buckle. The change in form made by Spangler does not rise to the dignity of invention. It is merely the skill of the expert mechanic. The shield of Mixer's buckle is ornamented. His interlocking parts are all back of and concealed by the shield when positioned for use. The same applies to Goldsmith. The Busch and Koopman shields can be ornamented and the interlocking parts are back of the shield. We ask, when these buckles are considered, where is there any invention in the Spangler buckle? That the court below did not give these patents due consideration is evidenced by its decision. Had these patents been given their due weight the decision must have been for the defendants.

In *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 260, 3 L. C. P. 973, at p. 976, the court says:

“Doubtless, if the Boyd patent contained an invention entirely new, and first adapted to the end sought, such differences might be regarded as formal and evasive [differences between Boyd’s patent and Strickler’s patent, under which defendants manufactured their device]. (Brackets ours.) But coming as he did in the train of the numerous inventors that had preceded him, whose inventions had been patented and put into practical use, we must conclude that Boyd, if entitled to anything, is entitled only to the precise devices described and claimed in his patent. Of course, it follows that if the defendants’ specific devices are different from those of Boyd, no combination of such devices could be deemed an infringement of any combination claimed by Boyd.”

It is settled that a claim for a combination is not infringed if any one of the elements is omitted without substitution of an equivalent.

Union P. Bag M. Co. v. Advance Bag Co., 184 Fed. 126-138.

III.

Error 4, that “The court erred in finding and decreeing that the buckles E and F were an infringement of the letters patent sued on,” and error 6, that “The court erred in holding that the anticipating patents did not limit complainant’s patent to the exact construction set forth therein and in the claim thereof and as so limited that the buckles exhibits E and F infringed

said letters patent and the claim thereof," will be discussed together.

Counsel for appellee dwelt largely upon the spirit of the Spangler invention and asserted that exhibits E and F embodied that spirit. He also loudly declaimed over the iniquity of defendant Bliss acquiring the information that led to his making a buckle, for which the Patent Office granted him a patent, from the Spangler buckle. The granting of a patent to Bliss for his buckle is an adjudication by that department of the government entrusted with the business of issuing patents that the Bliss buckle is a different buckle from the Spangler buckle.

The two buckles in the formation of the parts have only a single element in common, which performs the same identical function in each, to-wit, the shield with the rearwardly projecting flange. The shield is shown to be old. The flanges are not claimed by Spangler, and, moreover, flanges, too, are old. The lugs a2 and b4 of Mixer are the full equivalent of the Spangler flanges. All the other elements of exhibits E and F are different in construction except the cross-bar of exhibit E and the lugs of exhibit F, but in said exhibits the bar and lugs do not perform the same offices as in the Spangler buckle. In the Spangler buckle the cross-bar is absolutely necessary. Appellee Spangler in his testimony [see lower half page 27] says of his buckle: "If the transverse bar were omitted it wouldn't work at all, the parts would work loose. The parts would become loose by working movement of wear." The bar of E and lugs of F merely serve as guides to register the slot in the tongue with the stud

on the shield. If the transverse bar of exhibit E and the lugs of exhibit F were removed the buckles would be as useful as before. In exhibits E and F the shield has a stud on the back thereof. In Spangler the stud is on one of the interlocking elements. In E and F the stud has small cuts in the sides near the end called kerfs. In Spangler there are no kerfs in the stud. In E and F the stud holds the shield attached to one end of the belt, and is one of the interlocking elements. In Spangler the stud holds the plate 10 or swinging tongue attached to the belt, but as plate 10 swings on a bar connected to the flange on the back of the shield it may be said that the stud holds the shield attached to one end of the belt. To accomplish this plate 10, bar 9 and the flanges on the back of the shield are necessary. Nothing is required or used in E and F to take the place of plate 10, bar 9 and the flanges to hold the shield to the belt end. The stud is soldered directly on the back of the shield, and it is located in a different place with respect to the transverse bar from the stud in Spangler's buckle. In Spangler one end of the belt is provided with a *spring tongue* 15 which has a transverse opening, in which opening a hook on the end of tongue 10 enters to fasten the belts' ends together, and this spring tongue must be passed under the transverse bar on the back of the shield or the buckle will not work, and after it is passed under the bar it must be engaged by the hook of tongue. This *spring* character of tongue 15 is an element of the claim and is especially dwelt upon in the specifications at folio 35, page 62, as follows: "Tongue 15 is furthermore possessed of an inherent spring quality, and is

formed with a longitudinal curvature, so that the outer end portion thereof rides over the lip 12 when the element d is passed between the belt end a and the cross-bar 8, causing the automatic interlocking of the elements c and d." In E and F the tongues on the ends of the belts do not have any spring quality except that of the metal. They do not ride over anything to make an automatic engagement. The slot is not transverse, but is longitudinal and tapered. These slots pass over studs on the backs of the shields. It is true that the ends pass under a bar in E and studs in F, but the bar and studs only serve as guides to register the slots with the studs on the backs of the shields. The bar and studs are only conveniences. Remove them and the buckles will work equally well. To keep the tongues of E and F against moving longitudinally on the stud within certain limits kerfs are cut in the sides of the studs near the ends, and the outer ends of the longitudinal slots are narrower than the diameter of the studs, and the tongues slide back on the stud in these kerfs, so that to disengage the parts the tongues must be pushed forward to bring the wide back end of the slot to a point where its width equals or exceeds the diameter of the stud, and then pushed away from the shield and pulled back. The parts of the appellants' and appellees' buckles are as follows:

APPELLANTS' BUCKLE.

- (1) Shield with back flanges (old).
- (2) Transverse bar or studs on flanges.
- (3) Tongue with longitudinal tapered slot.
- (4) Stud with kerfs on back of shield.

APPELLEES' BUCKLE.

- (1) Shield with back flanges.
- (2) Transverse bar on flanges at front end.
- (3) Spring tongue with transverse slot.
- (4) Stud on face of swinging tongue.
- (5) Transverse bar on flanges at back end.
- (6) Swinging tongue on bar at back end.
- (7) Hook on end of swinging tongue.

It will thus be seen that exhibits E and F and the Bliss buckle leave out three essential elements of the Spangler buckle as covered by his patent.

A swinging tongue mounted on the back of a shield and provided with a stud that enters a strap to hold it to the buckle was not the invention of Spangler. Such construction is shown in Graves' patent of 1896 [page 72, Record]. A swinging tongue having a stud thereon is shown in the Latta patent of 1878 [page 84]. In the Graves patent the shield is called the buckle frame, and it is sewed or otherwise fastened to one end of the belt, while the other end is secured by the swinging tongue. The means for preventing the swinging tongue from escaping from the strap is somewhat different, but it is a bar passed over the end of the tongue to keep it from turning. In Spangler a tongue is passed under a bar and engages the swinging tongue and the bar keeps the swinging tongue of Spangler from turning and escaping from the strap. In function Spangler's buckle is the same as Graves' buckle. In construction there is not as much difference between Spangler and Graves as there is between exhibits E and F and Spangler. An ornamented shield with interlocking

parts back thereof, one of which is connected to the shield and the other connected to an end of a belt whereby the belt is secured upon the wearer, is not Spangler's invention. Such construction is found in Busch's patent of 1872 [pp. 65-6], and in Mixer's patent of 1901 [p. 76], where the special objects of ornamentation of the shield and the position of the interlocking elements back of the shield is especially set forth. In the patents to Koopman, 1895 [p. 68], and Goldsmith, 1897 [p. 80], the interlocking elements are all back of the shield, and the shield is capable of ornamentation. *Now, in view of these patents, what did Spangler invent?* Spangler tells us: "The invention consists in the *novel provision, formation, combination and association of parts, members and features* ALL as *hereinafter described*, shown in the drawing and finally pointed out in the claim." [Folios 29-34, p. 61, Record.] The italics are ours. Of the elements described appellants only use the shield with its back flanges, which we have shown is old. The other parts are not of the same "formation" as Spangler's other parts. They are not "*combined*" in the same manner that Spangler combines his parts. They do not have the same "*features*" as Spangler's parts. Spangler's shield with a swinging tongue carrying a stud is old, as shown in Graves' patent of 1896 [p. 72, Record]. A part carrying a hook on one end of the belt attached to the back of the shield, and another part having a transverse slot therein attached to the other end of the belt, the hook being received in the slot in the tongue to effect the engagement of the ends of the belt, the interlocking parts being back of the shield, is old, as shown

in Koopman, 1896 [p. 68], Mixer, 1901 [p. 76], and Goldsmith, 1897 [p. 80]. If there is any novelty it resides in putting a hook on the end of the swinging tongue, using a *spring tongue* with a transverse slot, into which slot the hook of the swinging tongue is received, and a bar spaced from the back of the shield under which the spring tongue is passed to go into automatic engagement with the hook of the swinging tongue.

Appellants do not use this "*combination*" of parts, neither are their parts of the same "*formation*." They use a less number of parts, all of which except the shield, which is old, are different in "*formation*," different in "*combination*," different in "*construction*," and different in "*association*."

In *Union Match Co. v. Diamond Match Co.*, 162 Fed. Rep. 148, at page 155, the court (C. C. A. 8th Circuit), in speaking of anticipating patents, says:

"Without holding that the devices of any of the foregoing patents amount to anticipations of the claims in suit, as to which we express no opinion, it is sufficient for our present purpose to observe that they disclose that many inventors had been engaged in various ways and with varying degrees of success in the effort to accomplish the beneficial results achieved by them.

"Complainant's invention, therefore, cannot be classified as a primary one, or the inventors as pioneers in the art to which they devoted attention. On the contrary, we think it clearly appears that their claimed invention concerns improvements made in a well developed art and accomplished results which are not new,

but at best only better than had been accomplished before. In view of this conclusion, complainant is entitled, in determining the issue of infringement or non-infringement presently to be taken up, to a narrow range of equivalents only. The public should be protected against unwarranted monopoly as much as the inventor against piracy. To accomplish both these ends the patentee is entitled to monopolize the very device of his patent, together with all fair mechanical equivalents thereof. But in determining what are such equivalents the public has a right to demand a careful scrutiny, so that under the pretense of his patent the patentee shall not be allowed to improperly stifle competition and enjoy an unmerited monopoly. When the invention is a primary one, and the inventor is a pioneer in a given art, he is worthily entitled to a wide range of mechanical equivalents; but when the invention is along the lines of past efforts, which have met with more or less success, and the inventor has only an improvement in an art already well advanced, a proper regard to the welfare of the public and of other meritorious inventors requires that the range of equivalents should be reduced accordingly. *Miller v. Eagle Manufacturing Co.*, 151 U. S. 186, 14 Sup. Ct. 310, 38 L. Ed. 121; *Kokomo Fence Machine Co. v. Kitselman*, 189 U. S. 8, 23, 23 Sup. Ct. 521, 47 L. Ed. 689; *National Hollow B. B. Co. v. Interchangeable B. B. Co.*, 45 C. C. A. 544, 106 Fed. 693.

“Certain other well-settled principles may appropriately be adverted to before we take up the question of infringement. No device can be held to infringe a combination claim unless it employs all the elements of it;

in other words, the absence of a single essential element of a combination claim in an alleged infringing structure is fatal to the charge of infringement. *Cimioti Unhairing Co. v. Am. Fur. Ref. Co.*, 198 U. S. 399, 410, 25 Sup. Ct. 697, 49 L. Ed. 1100; *Bramer Mfg. Co. v. Witte Hardware Co.* (C. C. A.), 159 Fed. 726; *Portland Gold Mining Co. v. Hermann* (C. C. A.), 160 Fed. 91. A patent for described means or mechanism to accomplish a desired end must be limited to the particular means described in the specifications or their clear mechanical equivalents, and does not embrace or cover any other mechanical structure which is substantially different in its construction or in its operation. *Eames v. Godfrey*, 1 Wall. 78, 17 L. Ed. 547; *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 260, 15 Sup. Ct. 837, 39 L. Ed. 973; *Westinghouse v. Boyden B. B. Co.*, *supra*; *Bryce Brothers v. National Glass Co.*, 53 C. C. A. 611, 116 Fed. 186; *O. H. Jewell Filter Co. v. Jackson*, 72 C. C. A. 304, 140 Fed. 340.

“With these principles of law concerning mechanical equivalents, infringement of combination claims, and limitation of means for producing given results in view, we approach the decisive question in the case: Is the defendant an infringer? Presumably it is not. Its device is in substantial conformity to the machine of the Wyman patent, No. 736,668, which was issued to defendant August 18, 1903, after the patent in suit was issued to complainant. Both defendant’s patent and its alleged infringing device were intended to accomplish the results sought to be accomplished by the two groups of complainant’s patent under consideration. The grant of a patent to defendant to accomplish these results,

with complainant's patent presumably in view and under consideration, indicates that the Patent Office considered the means of the former to be different from the means of the latter, and raises a presumption that they are in fact substantially different (*Boyd v. Janesville Hay Tool Co. and Kokomo Fence Machine Co. v. Kitzelman, supra*); and this presumption, we think, is re-enforced by the facts of the case. The defendant's structure is differentiated from complainant's, both in that it does not employ all the elements of complainant's combinations in the construction of its device, and in that the structure of the defendant does not employ the same means or operate in the same way as complainant's. It fails to disclose the requisite identity of means or of operation. *Cimiotti Unhairing Co. v. Am. Fur. Ref. Co., supra.*"

Binckley, complainant's expert witness, in comparing exhibits E and F with the Spangler buckle exhibit C, states: "There is, of course, a mechanical difference in the arrangements of these parts." [P. 42, Record.] On page 43 he says: "In conclusion I wish to state with respect to the functions and uses of the buckles constituting complainant's exhibits A and C and complainant's exhibits E and F, that there is no functional difference in any of the essential elements of the exhibits." The court below adopted this view and gave judgment for appellee, losing sight of the fact that *functions are not patentable*, and that Spangler was not an originator, but merely an improver.

While it is true that appellants' combination of parts effect the same result as the combination of parts of

Spangler, it is equally true that results are not patentable. The same results were accomplished by parts differently formed and combined differently years before Spangler entered the buckle field.

The Busch buckle of 1872 [p. 65] is perfectly covered by Spangler's claim up to the point where he commences his description of what his interlocking elements consist in [line 17, p. 63]. Taking the elements of Spangler's claim and comparing them with the Busch buckle, we have the following: A buckle comprising, 1 a shield or plate provided with a rearwardly disposed bar spaced therefrom, 2 holding means for connecting the shield or plate with a strap or other device, 3 interlocking elements (3a) one of said interlocking elements being connected with said shield or plate rearwardly thereof, and (3b) holding means for connecting the other of said interlocking elements with a strap or other device.

Busch has, 1, "a shield or plate (A) provided with a rearwardly disposed bar spaced therefrom (b), 2 holding means for connecting the shield or plate with a strap or other device (hooks a-a), 3 interlocking elements (3a), one of said interlocking elements being connected with said shield or plate rearwardly thereof (bar b), and (3b) holding means for connecting the other of said interlocking elements with a strap or shield (the other interlocking element of Busch is the hook held on the end of the strap by rivets).

The testimony of F. E. Monteverde, an expert witness for defendants, comparing the Spangler and Busch

patents and Spangler's patent with exhibits E and F, found on pages 47-51, Record, is as follows:

"Referring to the Spangler patent and the Busch patent, 'Defendants' Exhibit 1,' each buckle has a shield or plate provided with rearwardly disposed bars spaced therefrom. In the Spangler patent the shield is marked 6 and the bar 8. In the Busch patent the shield is marked A and the bar b. Big A and the bar small b. In the Spangler patent bar 8 is held by the side flanges turned up from the face of the shield, and in the Busch patent the bar b is held by lugs; also on the back of the shield. Both have holding means for connecting the shield with the strap shown in both drawings. In the Spangler patent the holding means is a stud marked 13. This stud is on the shank of the interlocking springing tongue 10. In the Busch patent the holding means are the retaining hooks shown as a, which are shown in the drawing. Both patents have interlocking elements, one of which is connected to the shield and the other to the end of the strap. In the Spangler patent the interlocking element which is connected to the shield is a spring tongue 10, this tongue having a hook 12 on the end thereof and a stud 13 thereon; and the other interlocking element is a spring tongue 15, which has a transverse elongated slot 19. This elongated slot occurs in the outer end, which allows the curved lip or hook 12 of the springing tongue to pass into engagement with the end of the springing tongue 15.

In the Busch patent the interlocking elements are the bar, marked b, already mentioned, and the hook d, which hook attaches over the bar b. I have examined

exhibits "E" and "F." With a slight modification in the construction they are both practically alike, substantially the same one with the other. Both of these exhibits have a shield, has the same construction practically as the Spangler and Busch patents. They also have a stud connected to the back of the shield at the front end of the shield by means of which the free end of the belt is detachably and adjustably connected to the shield. In this respect they are identical with the Busch patent except that Busch uses two curved studs or hooks, substituting them for the single stud in the other one. The elements in this construction I do not find in the Spangler patent. Another method of uniting the two ends of the belt, that is to say, these two exhibits, in their method of uniting the two ends of the belt, they differ from both Spangler and Busch. These exhibits both have a tongue which has a longitudinal slot broader at the end nearest the point where it is secured upon the end of the belt and narrowest toward the other end, and is attached upon the end of the belt. The manner of attachment to the end of the belt in this exhibit is shown by clamping over three triangular pieces that have been gouged from the plate proper and riveted over and clamped onto the end of the plate that holds it (witness points to complainant's exhibit "E"), and in the other exhibit the clamping is practically the same, except in one case it clamps longitudinally and in the other one transversely, but the method of clamping is identically the same in both. This tongue that I have described and shown in the exhibit is passed under lugs secured upon the side flanges of the shield, which lugs are secreted near the stud and then

are passed over the stud itself, with the slot surrounding the said stud, that is, after the free end of the belt is on the stud.

It is the same on both. I am answering in regard to exhibits "E" and "F," referring to complainant's exhibits "E" and "F." In this construction these exhibits "E" and "F" are different from both the Spangler and the Busch patents. In the Busch patent the hook d hooks over the bar b, thus holding the ends of the belt together. In the Spangler patent the stud 13, and the tongue 10, to lock the belt, this tongue 10 must be passed into the free end of the belt and the spring tongue 15 is then passed under bar 8, and the transverse slot 19 permits the end thereof to snap into engagement with the hook 12 on the end of tongue 10. Now, these kerfs on the studs of both the above-mentioned exhibits are for the purpose of allowing the stud to slide a little further in the slots, and to keep the tongue from longitudinal movement as to the axis of the stud when in contact with the sides of the stud when within the kerfs. They also serve as a safeguard to keep the tongue from slipping longitudinally on the stud. Were these kerfs omitted, the engagement and holding capacity would be just as great in one sense, but not in the other; that is to say, omitting the kerfs the tongue might be subject to longitudinal movement as to the axis of the stud, and therefore more likely to come off the stud accidentally. This would not occur by the use of the kerfs.

Referring to the engagement between the tongues in exhibits "E" and "F" with the studs in those exhibits

I would describe the interlocking device not as hooking the parts together or connecting them by hooking one upon the other, but more as a button and button-hole engagement, the stud representing the button in the case and the triangular shaped slot representing the button-hole."

The testimony of F. Waterfield, an expert witness for defendant, comparing the Spangler and Busch patents and Spangler's patent with exhibits E and F, found on pages 53-56, Record, is as follows:

"The points of similarity and dissimilarity between the buckles described in the Spangler patent, the patent in suit, and the Busch patent are as follows: They both have a shield and a rearwardly disposed bar spaced therefrom. The bar on the Spangler patent is secured to the side members of the shield and the bar on the Busch patent is secured to lugs mounted on the back of the shield. Both have interlocking members, one of which is fastened to the shield and the other to the free end of the belt. In the Spangler patent the interlocking members consist of a spring interlocking hook 10, having a hook 12 on one end of it and a stud 13; and a spring tongue 15, having a transverse slot near the end of that fastened on to the free end of the belt. In the Busch patent the interlocking members consist of hooks fastened to the back of the shield and a hook that is fastened onto the free end of the belt, which hooks over the bar b, secured to the back of the shield. These buckles on exhibits "E" and "F" are substantially the same. There is a slight difference in construction, but for practical purposes they are the

same. Exhibit "E" compares with the Spangler patent; they both have a shield, side members interlocking elements; the retaining members of the Spangler patent consist of the swinging tongue 10 and the stud 13 as far as the shield is concerned, and on the exhibit "E" the retaining members consist of a stud that is secured at one end on the back of the shield. The interlocking elements consist in the Spangler patent of the swinging tongue 10, the stud 13 thereon and a hook that has a curved lip that curves rearwardly, and the spring tongue 15, that has got a transverse elongated slot near the end, and this spring tongue is passed under the bar 8, and then is adapted to spring over and have a hooking engagement with the hook 12. In exhibit "E" the interlocking means consist of a bar which is similar to bar 8 in the Spangler patent, and the stud which also retains the belt—or rather secures the belt to the shield, and a tongue having an elongated slot that runs longitudinally of the tongue, and the largest end at a point where the tongue joins the belt and narrows down toward the other end. In the Busch patent the interlocking means consist of the bar b, which is disposed rearwardly from the back of the shield, and a hook d, which is secured to the free end of the belt and which hooks over the bar b. The belt is secured to the shield in the Busch patent by means of curved studs or hooks a, which are secured to one end of the shield. The function of those kerfs in exhibits "E" and "F" is to allow the spring tongue to slide further on the stud, and when the edges of the slot are in contact with the sides of the kerfs it prevents longitudinal movement of the locking tongue on the stud; that is,

the longitudinal movement is as to the axis of the stud. The engagement and holding capacity of the stud in the tongue would be as great were these kerfs omitted as it is with the kerfs, but it would be more liable to slip off the stud longitudinally than if the kerfs were there; provided as a sort of safeguard against accidental disengagement. The engagement of the tongue with the stud in these kerfs is not a hooked engagement, because in a hooked engagement a hook is necessary in order to make the parts perform their function. Remove the hook and the engagement is gone. In the case of these exhibits, if you remove the kerfs, the engagement is still there.”

The court can easily compare these patents, and it will find the testimony of Mr. Monteverde and Mr. Waterfield is correct. The complainant did not introduce any testimony to contradict it because the testimony is absolutely true. As the elements of the Busch buckle can be read upon the broad terms of the Spangler patent it would infringe the claim, and is therefore an anticipation, unless the broad elements of Spangler’s claim are limited and modified by the specific limitations of the latter part of the claim, as follows [see p. 63, last column]: “One of said interlocking elements consisting of a spring tongue adapted to be passed between said shield and said bar, and being provided with an opening, and the other of said interlocking elements being formed for hook engagement with said spring tongue through said opening.” As thus limited Spangler’s invention, if he made any, resides in the specific “construction, formation, combination and association” of these parts. This specific “construction, formation,

combination and association of parts" is not found in appellants' buckles, exhibits E and F, or in the buckle of the Bliss patent.

The broad combination of elements of the Spangler patent, with the single exception of the bar rearwardly of the shield, is found in the Koopman patent of 1895, found on page 68, Record, and in Mixer's patent of 1901, found on page 76, Record, and in Goldsmith's patent of 1897, found on page 80, Record.

Busch states that one of the objects of his invention is to provide a buckle "the face of which can be made of any desired shape and ornamented in any desirable manner, while its face covers up and conceals the fastening devices." [See paragraph middle last column, p. 66, Record.] Mixer shows an ornamented shield. [P. 76.] On page 77, folio 16, he says: "I employ two members which are adapted to interlock at their meeting ends, one of said members being formed with an outer portion or plate which is adapted to cover and conceal, the interlocking body portions of both members. The outer plate is thus adapted for the reception of filagree or for any other ornamentation." The other patents referred to show a shield that can be ornamented. Again, we ask, of what does Spangler's invention consist, if not of the specific "construction, formation, combination and association" of the parts back of his shield? An ornamented shield with interlocking parts to secure the ends of the belt together on the wearer, which interlocking parts are concealed by the shield and are on the back thereof, was first disclosed by Busch in 1872. Mixer in 1901 specifies the same thing as one of the objects of his invention.

Koopman, 1895, and Goldsmith, 1897, both show buckles having shields capable of ornamentation which conceal the interlocking parts. There was, therefore, nothing left for Spangler to invent in the buckle field but the specific "construction, formation, combination and association of parts, members and features" as described in his specifications and shown in his drawings, which is what he says is his invention. We say that in view of the prior art, there was no invention in making the changes in form of the interlocking elements back of the shield made by Spangler. Such changes are merely the work of the skilled mechanic. But if we concede that the making of such changes did involve invention, the invention resides in the specific changes of interlocking elements with their peculiar form and arrangement. Neither the buckle of the Bliss patent nor the buckles exhibits E and F have Spangler's specific arrangement of parts nor are the interlocking parts of the same form. Therefore, if Spangler's patent is valid for this specific formation and arrangement and combination of parts, nevertheless the defendants did not infringe by making buckles whose parts were more different in form and combination from the Spangler construction than his construction was different from the buckles of the prior patents.

In patents for a combination it is well settled that if any essential element of a combination is omitted from an alleged infringing device without substituting there-

for its clear mechanical equivalent, the charge of infringement is not sustained.

Fay v. Cordesman, 109 U. S. 408, Sup. Ct. 236, 27 L. Ed. 979;

Boyd v. Janesville Tool Co., 185 U. S. 260-267, 15 Sup. Ct. 837, 39 L. Ed. 973;

Cimiotti Unhairing Co. v. American Fur Refining Co., 198 U. S. 399, 410, 25 Sup. Ct. 697, 49 L. Ed. 1100;

Eames v. Godfrey, 1 Wall. 78, 79, 80, 17 L. Ed. 547;

Rowell v. Lindsay, 113 U. S. 97, 5 Sup. Ct. 507, 28 L. Ed. 906;

Union Match Co. v. Diamond Match Co., 162 Fed. 148-155, 156, 89 C. C. A. 172.

In Fay v. Cordesman above it is said, beginning at page 420 of 109 U. S., at page 244 of 3 Sup. Ct. (27 L. Ed. 979):

“The claims of the patents sued on in this case are claims for combinations. In such a claim, if the patentee specifies any element as entering into the combination, either directly by the language of the claim, or by such a reference to the descriptive part of the specification as carries such element into the claim, he makes such element material to the combination, and the court cannot declare it to be immaterial. It is his province to make his own claim and his privilege to restrict it. If it be a claim to a combination, and be restricted to specified elements, all must be regarded as material, leaving open only the question whether an omitted part is supplied by an equivalent device or instrumentality.”

In *Eames v. Godfrey*, 1 Wall. 78, 17 L. Ed. 547, in speaking of a patent for a combination, it is said:

“The end in view is proposed to be accomplished by the union of all, arranged and combined together in the manner described. The use of any two of these parts only, or of two combined with a third, which is substantially different in form or in the manner of its arrangement and connection with the others, is, therefore, not the thing patented. It is not the same combination if it substantially differs from it in any of its parts.”

In *McCormick v. Talcott*, 20 How. 405, the Supreme Court said:

“If the patentee be the original inventor of the device or machine called the divider, he will have a right to treat as infringers all who make dividers operating on the same principle, and performing the same functions, by analogous means or equivalent combinations, even though the infringing machine may be an improvement of the original and patentable as such. But if the invention claimed be itself but an improvement on a known machine by mere change of form or combination of parts, the patentee cannot treat another as an infringer who has improved the original machine by use of a different form or combination performing the same functions. The inventor of the first improvement cannot invoke the doctrine of equivalents to suppress all other improvements which are not mere colorable invasions of the first.

“And see *Kokomo Fence Co. v. Kitselman*, 189 U. S. 8, 47 L. Ed. 689, 23 Sup. Ct. Rep. 521, in which case

it was held that where the patent does not embody a primary invention, but only an improvement on the prior art, and the defendant's machines can be differentiated, the charge of infringement is not sustained. * * *

In the light of the facts presented in this case and the law applicable thereto, the appellants respectfully submit that the decree of the lower court should be reversed with instructions to that court to dismiss the bill of complaint, first, because there was no joint infringement; second, because there is no invention in complainant's patent; and third, because the appellants do not infringe.

Respectfully submitted,

G. E. HARPHAM,
Solicitor for Appellants.

No. 2370.

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Walter B. Bliss and Fresno Mono-
gram Adjustable Buckle Com-
pany, a corporation,

Appellants,

vs.

George P. Spangler,

Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This cause comes before this court on an appeal from an interlocutory decree entered against the Appellants-Defendants Walter B. Bliss and Fresno Monogram Adjustable Buckle Company, which interlocutory decree held that the Spangler patent No. 972,937 sued on was valid and jointly infringed by all the three Defendants, being those named and Modern Sales Agency of America, Limited, a corporation, against which latter the Bill was taken *pro confesso*; the Bill alleging that all three Defendants have jointly infringed upon the rights secured to Appellee-Complainant, by the acts of

the three Defendants “as *parties participating in the manufacture, use and sale of clasps or buckles*” embodying, containing and embracing the invention described, claimed and patented in and by said Letters Patent No. 972,937. The Defendant Bliss by his answer to the Bill interposed no defenses other than want of knowledge or belief or denial of the allegations of the Complainant. The Defendant Fresno Monogram Adjustable Buckle Company, in addition to such denials, interposed as its sole defenses certain prior Letters Patent of the United States. The interlocutory decree held that the Appellee is the owner of said Letters Patent No. 972,937, hereinafter referred to as the Spangler patent, that the Appellee-Complainant had properly marked devices made by him containing the patented invention of the Spangler patent, thereby duly notifying each of the Defendants of said Spangler Letters Patent; and that demand was made upon each of said Defendants to cease such infringement. The decree provided for the usual accounting and injunction, the latter directed against each of said Defendants, and ordered the usual taxation of costs against each of the Defendants. Further, the decree held that the three Defendants intend and threaten to continue such infringement.

The Defendants Bliss and the Buckle Co. assigned the following errors upon taking their appeal [pages 93 and 94 of the Transcript]:

ASSIGNMENT OF ERRORS.

1. The Court erred in holding that there was a joint infringement by Walter B. Bliss, Fresno Monogram Adjustable Buckle Company and Modern Sales Agency

of America, Limited, of the Letters Patent sued on in this action.

2. The Court erred in entering a decree in favor of Complainant.

3. The Court erred in finding and decreeing that the Letters Patent sued on are good and valid in law.

4. The Court erred in finding and decreeing that the buckles Exhibits "E" and "F" were an infringement of the Letters Patent sued on herein.

5. The Court erred in holding and finding that the anticipating patents did not constitute an anticipation of the claim of the patent sued on herein.

6. The Court erred in holding that the anticipating patents did not limit Complainant's patent to the exact construction set forth therein and in the claim thereof and as so limited that the buckles Exhibits "E" and "F" infringed said Letters Patent and the claim thereof.

For purposes of convenience and directness and completeness of reply to Appellant's brief the order in which Appellant presents his points and authorities will generally be followed.

I.

JOINT INFRINGEMENT SUFFICIENTLY SHOWN.

Although the main issue in this case pertains, of course, to the validity of the Spangler patent and the interpretation thereof, and the infringement thereof by the structures of the Appellant, the question of joint infringement is best disposed of initially. As the Bill was taken *pro confesso* against the Defendant Modern Sales Agency of America, Limited, and as this De-

fendant is not before this tribunal on this appeal, there is, of course, nothing but the transcript to stand upon as to the acts of this Defendant complained of. The testimony of Spangler [page 25, Transcript], and Complainant's Exhibit B, however, show that this Defendant was specifically notified of the patent before the suit thereon. The transcript shows that the decree was entered against this Defendant jointly with the other Defendants, and as the decree was entered *pro confesso* against it it is only to be assumed that the Bill was correct, although no testimony was taken on either side of this question. But joint infringement still attached to the acts of the Defendants-Appellants, as is clearly established by the stipulation of facts entered into between the Appellants-Defendants and the Appellee-Complainant, dated April 15, 1913, as found on pages 90 and 91 of the transcript. This stipulation was entered into after the Defendant the Buckle Company had offered in evidence a copy of United States patent to one Walter B. Bliss, appearing on pages 86 to 89 of the Transcript, without any identification thereof or the connecting thereof with the Appellant of that name; and it was in order that the court might fully be informed of the circumstances involving both this Bliss patentee and the Appellant of that name, and that the relations of Bliss and the Buckle Company might be of record, that this stipulation was invited by Appellee. No testimony of Bliss was taken. It so developed that Appellant Bliss was such patentee, and that at the time the Buckle Company were manufacturing and selling the buckles complained of such company owned said patent; that said Bliss had himself infringed the patent, if our

charge be sustained; and that since the issuance of the Spangler patent Bliss had joined with the Buckle Company or been associated with the Buckle Company in connection with the making and selling of such infringing buckles. That joint infringement existed as between Bliss and the Buckle Company this stipulation permits of no doubt. Joint infringement is thus established, and as to the Appellants it is immaterial as to whether there was found joint infringement, in any or in all acts, of such Appellants with the Defendant Modern Sales Agency of America, Limited.

See

Toppan *et al.* v. Tiffany Refrigerator Car Co.,
39 Fed. 420;

Featherstone v. Ormonde Cycle Co., 53 Fed. 110.

Although the infringing buckles bear close relation to the disclosure of the Bliss patent, as we shall show, the record shows no comparison of the same with such patent, and even if they were made in accordance with such disclosure there is no controlling presumption that infringement did not thereby arise. While the granting of a patent is *prima facie* evidence of a *difference* between its subject and that of a prior patent, nevertheless the granting of a patent conveys no right to the patentee to make, use and sell, but only the right to *exclude others* from such manufacture, use and sale.

Hermann v. Youngstown Car Mfg. Co., 191 Fed.
579 (pages 584 and 585).

Bliss defended the action, and there was no showing that he had discontinued his relation with the Buckle

Company. The stipulation speaks for itself; but its fair import is an admission that Blass was "related with" the Buckle Company, during the times concerned in the proofs, in connection with making and selling the infringing buckles, and that is sufficient to establish the joint infringement side of the case. Only Bliss and the Buckle Company are appealing.

It is for the Master, on accounting, to find how far the several Defendants *participated* in the infringing acts. The injunction operates against *all* infringing acts.

See

Toppan *et al.* v. Tiffany Refrigerator Car Co.,
and Featherstone v. Ormonde Cycle Co., *supra*.

II.

THE SPANGLER INVENTION.

As will develop in connection with the discussion of the prior art, the Spangler patent introduced into the art a radically novel departure. It was not new to provide an ornamental shield or plate to be exposed forwardly or outwardly upon the belt; nor fastening means for holding the ends of the belt together behind such shield or plate. The problem in the art had been how to form, arrange and interrelate such fastening means so that simple and convenient relative adjustment of the ends of the belt might be effected, to lengthen or shorten the operative portion of the belt encircling the body of the wearer; and further how to provide for easy and convenient attachment and detachment of the belt and buckle, in application to and removal from the

person. A further problem was to accomplish all these results and at the same time provide means and devices thereunto which would lie substantially flat between the ornamental plate or shield and the wearer so as not to impinge uncomfortably upon the wearer and tend to tear the clothing. The final factors desired were compactness, neatness and attractiveness of appearance of the whole, and an approximately complete masking of the entire adjusting, fastening and holding organization, so that the buckle or clasp might be self-contained as to all its features and have the appearance merely of an ornamental device or attachment rather than that of mechanical adjuster, fastener or means of attachment. Spangler conceived the idea of providing a *single or unitary* means to hold one end of the belt, which we will call the butt end, in position flat against the back of the shield, and also to inter-engage with means upon the other end, which we will call the free end of the belt, so that both ends of the belt would be held together when on the wearer, and also held to the shield in close assemblage. This he accomplished. In the one form disclosed in the Spangler patent the shield 6 has pivoted behind it, between side flanges 7, upon a bar 9, a tongue or plate 10 carrying a rigid stud or pin 13 which is entered in the proper hole 14 in the butt end of the belt, in accordance with the adjustment of the butt end with respect to the shield; such stud in operative position passing clear through the hole and engaging with the back face of the shield. The outer or free end of the plate 10 has an angular lip or hook 12 formed to be engaged with a tongue 15 suitably attached to the free end of the belt, such

tongue 15 having a slot 19 which receives the curved lip 12. When the stud 13 is in the belt hole and the lip is hooked into the slot 19, the butt end of the belt is held flat against the back of the shield between the tongue 15 and plate 10 and the shield. A cross bar 8 spaced rearwardly from the shield extends between the side flanges 7, and the tongue 15 is passed between the butt end of the belt and this cross bar when it is to be engaged with the lip 12. This cross bar likewise serves to hold the tongue 15 down against the butt end of the belt, likewise holding down the plate 10 and holding the stud 13 against the back of the shield, through the hole in the butt end of the belt. When the belt is to be detached from the wearer, the tongue 15 is simply moved slightly to disengage the lip 12 from the slot 19, whereupon the tongue 15 may be slipped free of the lip 12, at the slot 19. The tongue 15 is preferably metallic and necessarily has an inherent spring quality which assists in engagement with the lip 12, and also in holding the butt end of the belt down against the back of the shield. It will be noticed that the side flanges 7 enclose approximately all of the adjusting and fastening parts, forming with the shield a box open at the ends and back and which, with the belt ends, masks all of the working parts of the device from view when the belt and buckle are in place on the wearer. This latter feature, while not specifically recited in the claim, is a part of the general disclosure of the patent, and is not found in the prior art cited, but is nevertheless industriously appropriated by the Appellants, being a striking feature of the imitation which will hereinafter in detail be pointed out.

The pivoted plate 10, carried by the shield through the side flanges, constitutes the unitary means for holding the butt end of the belt in position flat against the back of the shield, through the agency of the stud 13 fixed to said plate 10, and for holding both ends of the belt together and to the shield, through the agency of the lip 12 upon said plate 10 and which is inter-engaged with the tongue 15 attached to the free end of the belt and which likewise bears against such portion of the butt end of the belt as may lie rearwardly of the shield in that zone of the buckle. In combination with this broad subject matter, Spangler further provided the cross bar 8 serving to guide the tongue 15 when advanced for engagement with the plate 10, and likewise serving to hold the tongue 15 down against the butt end of the belt and hold the latter against the back of the shield. The compactness of this structure and further advantages are pointed out in the Spangler patent [lines 100 to 117, page 2, page 62, Transcript.] Spangler states clearly the object of his invention, as witnessed by lines 9 to 28, page 1 of the patent specification, page 61 of the Transcript, namely:

“This invention relates to clasps or buckles, or similar adjustable connection and attachment devices; and it has for its object to provide improvements with relation thereto which will be superior in point of positiveness in operation, convenience in use and manipulation, facility in installation or connection, and disconnection, with respect to working position, relative simplicity and inexpensiveness in construction and general efficiency.

“The invention has for its particular object the provision of an improved clasp or buckle which will be

more slightly in appearance and more conveniently manipulated, in service, than are devices of the same character now customarily employed; and the use of which is attended by less injury to the belt or other device or object in connection with which it is employed."

In this statement as to the last feature, a clear distinction is drawn as between the toothed swinging clamps such as shown in the prior art cited and which constitute the familiar suspender fastener of the prior art, as witness the Mixer patent [pages 75 to 78, Transcript].

Spangler then states, lines 29 to 34 of page 1 of the Spangler patent:

"The invention consists in the novel *provision*, construction, formation, combination and association of parts, members and *features*, all as hereinafter described, shown in the drawing, and finally pointed out in claim."

SPANGLER PATENT AND CLAIM THEREOF BROAD IN PROPER INTERPRETATION.

It is to be noted that broadly the object is that of novel *provision*—not only of parts and members, but of *features*, together with the construction, formation, combination and association of such features and the parts and members exemplifying or embodying such features. What broader and more comprehensive statement can be made of the nature of any mechanical invention? The Spangler claim will not be found limited in its specific terminology to any of the particular features of the disclosure of the specification and draw-

ing of the Spangler patent. It calls for, first, a shield or plate (6); second, a rearwardly disposed bar spaced therefrom (8); third, holding means for connecting the shield or plate with a strap or other device (specifically the stud 13 upon the plate 10); fourth, interlocking elements, or rather one of said interlocking elements, the same being connected with said shield or plate rearwardly thereof (specifically the lip 12 upon the plate 10); fifth, holding means for connecting the other of said interlocking elements with a strap or other device (specifically the pin 18 entering holes or openings 17 in the ears 16 projecting from the tongue 15 which is connected with the free end of the belt, or the teeth 21, if preferred); and, sixth, the other of said interlocking elements being the tongue 15, having inherent spring quality, and which has the slot 19 which receives the lip 12.

This spring tongue, the claim recites, is adapted to be passed between said shield (6) and said bar (8); and that the first interlocking element, lip (12) is formed for hook engagement with said spring tongue through the slot (19) in it.

The third and fourth of these main elements constitute the unitary means above referred to for holding the two ends of the belt together and both to the shield and holding the butt end flat to the shield. The claim is to be read as a whole, taken in connection with the specification and drawing, and is a fair embodiment of the broad subject of the invention which has been delineated.

Against this broad and important, if not pioneer, invention the Appellants raise a prior art, in one example

of which is found an approximation of one element of the Spangler invention, or one of the specific parts disclosed as the embodiment thereof shown in the patent, and in another example of which prior art they find another such feature; but not in a single instance in the prior art can they find any suggestion or hint of the broad invention stated above, with the *unitary* means acting to hold the butt end of the belt flat to the shield at the back thereof, and to engage with means on the other end of the belt to hold both ends of the belt together and to the shield, providing a compact, adjustable and readily manipulated device, of neat and unobtrusive appearance.

PRIOR ART FRAGMENTARY AND NOT ANTICIPATORY.

Let us survey this prior art hand in hand with Appellants, as on page 10 of their brief. Patent to Busch [pages 64 to 66, Transcript] does indeed disclose a shield with a rearwardly disposed bar *b* spaced therefrom. On the other hand, it shows separate means (not unitary), namely, the hooks *a* and the transverse bar *b* for engagement with the opposite ends of the belt. Nor does the transvers bar *b* pass over the free end of the belt;—it is simply an anchorage for the hook *d* on the free end of the belt. There is no cross bar extending over the free end of the belt to hold it in place, and there is no tongue with a slot in it. The hooks *a* are presented next to the clothing of the wearer, where they may readily engage and tear the same. Busch, Koopman, Mixer and Goldsmith do show means for connecting the buckle with the belt; Mixer and Goldsmith also having shields. Not one of these prior patents shows

the unitary means of Spangler, nor does any one of them show the cross bar of Spangler, nor the tongue of Spangler passing beneath the cross bar, and consequently no such tongue holding the butt end of the belt down. These patents all show distinct and separate parts for holding the separate ends of the belt together, and through various connections, to the shield. Nor do any of these patents show interlocking elements, one being connected with the shield or plate rearwardly thereof and the other consisting of a tongue adapted to be passed between said shield and said cross bar and having hook engagement with the other of said interlocking elements. In fact, not one of said prior patents shows anything suggestive of the stud 13 of Spangler, being specifically the holding means for connecting the shield or plate with the belt, and an integral or rigid part of the lip 12 which has hook engagement with the tongue. This stud, holding the butt end of the belt, and being integral or in rigid connection with the part that interlocks with the tongue, will be found to have been embodied essentially in the infringing structures. As far as these patents go, in similarity, is to show among them a shield, and inter-hooking parts connecting the ends of the belt, through various agencies, with the shield. The part which holds the butt end of the belt to the shield in not one single instance permits the adjustment of the butt end of the belt and holds it in place back of the shield, and at the same time interlocks with the free end of the belt. In other words, not one of these patents answers the requirements of the broad statement of the invention which contemplates the so-called *unitary means* of the Spangler patent. No

cross bar operating the same as Spangler's cross bar 8 is found in any of them, and, as stated, no integral or rigidly connected or one-piece stud and interlocking element. Nor is the pierced tongue on the free end of the belt and having interlocking engagement with the unitary device upon the shield found in a single one of these prior patents. Nor does a single one of these prior patents show the box-like structural housing and concealing all the working parts. An edge view of the Spangler device, such as obtained in looking down upon the buckle when in place upon the wearer, discloses none of the working parts. In these prior patents the working parts are visible, and the cumbersome mechanical nature of each device is at once manifest. The cleverness manifested by Spangler in providing this box-like enclosure was recognized by Appellants, and they immediately imitated the latter and have always used it. As above stated, this box-like structure is not specifically claimed, but its appropriation by Appellants is the best kind of evidence of piracy, of imitation, and of following the teaching of the Spangler patent rather than that of the prior art. *All of the above leading features of the Spangler patent* which have been pointed out in differentiation from these prior patents are incorporated in the infringing structures, element for element, function for function. And yet Appellants bow in adoration to the prior art and turn the cold shoulder of denial upon the Spangler patent, which has been the reference work of their shop and salesmen.

SPANGLER TOOK FINAL STEP IN THE ART.

It certainly showed great inventive ability in Spangler to enter an art replete with patented attempts and produce the buckle which has taken the field. The Spangler patent, which is found to materially differ from each one of these prior patents, and from all of the same taken together, is so closely and painstakingly followed in the infringing structures, by Appellants, in a record in which there is not a word to support the assumption that a single one of these prior patented devices ever was made or sold, that the loud tones of Appellants in denial of infringement dwindle to unintelligible whispers when ear is given to the voice of the record. This voice cannot be mistaken, and it says: "*Spangler took the final step in the art, and this taught Appellants how to walk.*" This is paraphrasing Mr. Justin Brown in "The Barbed Wire Patent," 143 U. S., when he said:

"In the law of patents it is the last step that wins."

Of the other prior patents relied upon by Appellants, Latta, for a trace-buckle, shows no shield adapted for ornamentation, no single part holding the two ends of the belt (for there is no belt) together, and of course not to a shield, no interlocking parts such as Spangler, and no slotted tongue and no transvers bar over the same, nor any box-like enclosing structure.

Graves shows what happens to be one specific feature of the Spangler buckle, namely, a swinging plate, 7, with a stud 11, but this plate has no hook or lip, such as in the Spangler patent, at its outer end, for interlocking with a tongue, no such tongue or the like, and

Graves has no ornamental shield or plate, nor box-like frame. One end of the strap is riveted fixedly to the buckle frame, which is the antithesis of anything disclosed by Spangler. The only resemblance is means for adjustably connecting one end of the strap with the buckle frame through the stud 11. There is no interlocking engagement and no mode of operation which suggests that of Spangler. It will be seen that these further patents in the prior art are all as radically differentiated from the Spangler patent and any essential features thereof above pointed out, and even more so, than the Goldsmith, Mixer, Koopman and Busch patents above discussed; and no one or all of the same taken together can anticipate *the provision of parts and features*, and the combination and inter-relation of the same, constituting any embodiment at all of the Spangler invention.

The expert witnesses of Defendant do not discuss any of the prior patents other than the Busch patent above referred to, and the Busch patent has been disposed of above by clearly distinguishing the same from the Spangler patent. The testimony of Defendants' expert witnesses taken together corroborates these differentiations. [See testimony witness Waterfield, page 57, Transcript, and of witness Monteverde, page 52, Transcript.]

LAW IN THIS CIRCUIT AS TO ANTICIPATION.

This court is squarely on record, in a recent decision, against attempted anticipation by any such fragmentary unrelated features as may be picked out here and there in the prior patent art. It was said in *Stebler v. River-*

side Heights Orange Growers' Ass'n. *et al.*, 205 Fed. Rep. 735, at page 738, quoting from the decision in Los Alamitos Sugar Co. v. Carroll, 173 F. R. 280, 97 C. C. A. 446, also decided by this court:

"It is not sufficient to constitute an anticipation, that the device relied upon might, by process of modification, reorganization, or combination, be made to accomplish the function performed by the device of the patent."

Citing:

Western Elec. Co. v. Home Tel. Co. (C. C.),
85 Fed. 649;

Topliff v. Topliff, 145 U. S. 156, 12 Sup. Ct.
825, 36 L. Ed. 658;

Parker v. Stebler, 177 Fed. 210 (a decision of
this court);

Gunn v. Bridgeport Brass Co. (C. C.), 148 Fed.
239;

Ryan v. Newark Co. (C. C.), 96 Fed. 100;

Simonds R. M. Co. v. Hathorn Mfg. Co. (C. C.),
90 Fed. 201-208;

Gormully & J. Co. v. Stanley Cycle Co. (C. C.),
90 Fed. 279;

Morrow v. Shoemaker (C. C.), 59 Fed. 120.

SPANGLER TOOK LONG STRIDE IN THE ART.

There is evidence in the record that Spangler was practically a pioneer as far as anything more than a paper art is concerned. Spangler says [page 29, Transcript]:

"Prior to the time I placed my buckle or buckles like
"Complainant's Exhibit 'C' " on the market I had never

seen a buckle having a plate or shield outwardly exposed or presented with the two ends of the strap or belt engaged together behind the plate or shield by means of a member on one end of the belt engaging with a member adjustable connected with the other end of the belt, such engagement being between a slotted tongue on one belt-end and means connected with the plate and permitting adjustment between the plate and the other end of the belt.”

Ross, who testified [page 35, Transcript] that he is a merchant in the trunk, baggage and suit-case line, and employs Spangler, and that he had been handling carved leather belts from 1892 to about 1905, when he then went into the business stated, and that he has been selling the Appellee's buckles and belts, said that prior to handling these Spangler buckles he had “seen buckles with a plate that is snapped over but nothing that is slid underneath that and fastened in the way that Exhibit “C” is fastened, that is slid behind the plate.” He also testifies that the business of selling the Spangler buckles fell off a little about a year ago last spring. This falling off is likewise referred to by Spangler [page 30, Transcript], and shows the effect of the vigorous invasion of the market by the infringing buckles. Spangler further testifies [page 25 of the Transcript], that he is by occupation a belt manufacturer and has been engaged in that line twenty-five years. This testimony of men skilled and advised in this art practically establishes the Spangler invention as pioneer in the buckle art. Not a word of testimony was taken to show the contrary. There is but one assumption; namely, that the prior patented devices

never went extensively onto the market. The Spangler invention took and held the field. Spangler, in his small way, largely in the store of the witness Ross, had sold some seven hundred of the Spangler buckles from June, 1910, until the spring of 1913 [pages 28 and 30, Transcript]. Spangler testifies that he is employed by Ross, and that he has no considerable capital to employ in the manufacture of these buckles [page 31, Transcript]. His limited ability to exploit his invention made it easy for the corporate Defendant to play the pirate and reap the benefits which he should have received.

PRIOR UNSUCCESSFUL ART TO BE JUDGED ACCORDINGLY.

As against any such attempted anticipations, the rule is well established, as set forth in the opinion rendered in the *Western Elec. Co. v. Home Tel. Co.*, 85 Fed. 649:

“The force of this ruling is made manifest, in its practical applications to the rights of parties, by the reflection that all earlier patents set up in defense against a later patent sued upon are but the record evidence of the status the art has reached. The rights under such later patent are subject to what this record evidence *actually shows*. To change this record, by permitting theoretical modifications of these earlier patents, would be the same, in principle, as to change, by interpolation or modification, any other evidence between the parties.”

Further see

Tannage Patent Co. v. Zahn, 70 Fed. 1003.

As said in *Wales v. Waterbury Mfg. Co.*, 59 Fed. 285 (a buckle case), one who takes old devices with material defects, and retains the desirable features with a definite idea of remedying the same, and adapts them by novel modifications to new and varying conditions, so as to produce an article confessedly superior to all others, is not anticipated by such prior devices.

The Circuit Court of Appeals of the First Circuit, in *Forsyth v. Garlock*, 142 Fed. 461-463, said:

“Our general observation as to these is that the citation of so many patents by a respondent in an infringement suit sometimes tends, as we have several times said, not so much to weaken the complainant’s position as to strengthen it, by showing that the trade had long and persistently been seeking in vain for what the complainant finally accomplished.”

SPANGLER PATENT CLAIM ENTITLED TO BROAD CONSTRUCTION.

While the claim of the Spangler patent is for a number of features, it is not strictly a combination claim. The word “combination” does not appear therein, and it is not a combination claim in the same sense as a claim for a group of inter-operating features, such as driving gears of a machine, is a combination claim. We shall be able, however, to show that every essential element of the Spangler claim, *as well as every essential feature of the Spangler invention*, is present in the infringing structures. On this head, as said in *Stebler v. Riverside Heights Orange Growers Ass’n., et al.*, *supra*, 740:

“True, the plaintiff's rights do not extend beyond the claims in suit, and are subject to the limitations thereof; but the language of these claims is not, as argued by the defendants, to receive a narrow, literal construction. While the invention is not basic or primary, it is substantial and important, and is therefore entitled to a fair range of equivalents.” (Citing *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 28 Sup. Ct. 748, 52 L. Ed. 1112.)

We are now prepared to more specifically discuss the question as to whether this manifestly valid and unanticipated Spangler patent, as against which the only defense was alleged anticipation by the above carefully differentiated prior patent art, is infringed by the structures made and sold by the Appellants, and on that head we must bear in mind the importance of the invention and the long stride which the patentee took over the prior art cited.

III.

THE INFRINGING STRUCTURES.

What are the infringing structures? For a reasonably fair answer reference may be made to the Bliss patent (pages 86 to 89, Transcript], and more particularly to Figures 1, 2, 3 and 6 thereof, assuming the modification specifically shown in Figures 2 and 3 enters also into the construction shown in section in Figure 6, and which view is particularly referred to because it so closely follows the showing in Figure 3 of the Spangler patent. Figures 4, 5 and 6 show the stud 7 with an enlarged head, whereas Figures 2 and 3 show the stud with kerfs (saw cuts) or recesses 14

in the sides of the stud adjacent to the outer end; said stud being fixed rigidly to the shield 1. Otherwise the showing agrees substantially throughout all the Figures shown in the drawing of the Bliss patent. Complainant's Exhibit "E" shows substantially the showing of the Bliss patent and particularly of Figures 2 and 3 thereof. Complainant's Exhibit "F" merely provides an interrupted cross bar (or lugs) in substitution for the continuous cross bar 5 of the Bliss patent. It is to be noted that the Bliss patent specification says, in lines 34 to 36, page 1 of the specification [page 88, Transcript], that the rear edges of the flanges 4 are connected by transverse bars or keepers 5 and 6; and they perform identically the same functions as the Spangler transverse cross bar 8 and the bar 9 upon which swings the plate 10. As to the interrupted cross bar of Complainant's Exhibit "F," this is purely a mechanical equivalent of the Spangler patent's continuous cross bar 8 or of the Bliss patent cross bar 5. Expert Binckley so testifies [page 42, Transcript] as follows:

"The function of the lugs in Complainant's Exhibit 'D' is the same as the function of the corresponding lugs in Exhibit 'F' and of the bar in the corresponding position on Exhibit 'E.' "

The other transverse bar or its equivalent of the Bliss patent and of Exhibits "E" and "F" assists to hold the butt end of the belt in the box-like shield structure in the same manner as the bar 9 of the Spangler patent does. Binckley so testifies with respect to Exhibit "E" and the Spangler patented buckle as follows:

“The bar ‘9,’ carrying the hook ‘C’ (should be c) in Exhibit ‘A’ (Spangler patent) performs the double function providing support for this swinging hook (c) and retaining the belt in its proper relation behind the shield or plate. In Exhibit ‘E’ the transverse bar performs the same function of retaining the belt in its position. The function of the other transverse bar shown in Complainant’s Exhibit ‘E’ is to retain the spring tongue in position behind the belt when engaged with the stud.” [Page 42, Transcript.]

BOTH SPANGLER PATENT AND INFRINGING STRUCTURE
HAVE ESSENTIAL COMMON FEATURES.

Now this stud of Exhibits “E” and “F,” and of the Bliss patent, namely, of the infringing structures, serves to hold the butt end of the belt adjustably in position against the rear of the shield (the stud is entered in the proper belt hole), and also serves to interlock with the spring tongue 9 secured to the free end of the belt by the rivets 11. Thus the stud 7 constitutes unitary means for holding the butt end of the belt to and rearwardly of the shield, *and flat against it*, and for holding both ends of the belt together and to the shield. Binckley testifies [page 41, Transcript]: “In the use of Complainant’s Exhibit ‘E’ this stud performs the double function of retaining the end of the belt in the proper relation with the plate or shield and engaging with the spring tongue attached to the other end of the belt.” The spring tongue 9 of the Bliss patent and of Exhibits “E” and “F” (and these are spring tongues), has a slot in it through which the stud is passed; the walls of the slot, in a diminished portion,

being engaged with the stud 7 in the kerfs thereof in *hook engagement*. These spring tongues have a spring quality, as the witness Binckley testifies:

“The function of the spring tongue is the same in each case as far as I can see.” [Page 42, Transcript.]

“All have certain inherent spring quality, but this spring quality is not the same in exhibits ‘E’ and ‘F.’ There is more in ‘E’ than there is in ‘F.’ It appears to be the difference in the metal employed and the shape of the metal as formed.” [Pages 44 and 45, Transcript.]

When the spring tongues are to be engaged with the studs, in the several exhibits, they are passed under the cross bar or equivalent lugs. The modes of attaching and detaching the spring tongue on the free end of the belt and the stud are substantially the same as obtained with respect to the manipulation of the spring tongue and lip or hook 12 of the Spangler patent. The spring tongue of Exhibits “E” and “F” and of the Bliss patent is passed in under the cross bar or equivalent lugs, causing the flexion of the spring tongue which yields as the slot in the tongue comes over the stud. The witness Binckley testified to this as follows:

“Now, if each of the tongues of Complainant’s Exhibits ‘E’ and ‘F’ is placed at its outer end upon the outer end of the stud so that the tongue is flexed slightly and the tongue is moved along the stud until the stud passes through the opening this flexion will be relieved if the opening in the tongue approaches and engages the stud. In connecting the tongue with the stud in bringing the ends of the belt together the

tongue will probably be slid along the stud in engagement therewith.” [Page 45, Transcript.]

So we have in the infringing structures and the Bliss patent, in common with the Spangler patent, a box-like shield body, *unitary means* for adjustably holding the butt end of the strap in the box-like shield body *flat* against the rear of the shield and for interlocking with another element, the latter being a spring tongue, connected with the free end of the belt, to hold both ends of the belt together and to the shield. And we further have in the infringing structures as in the Spangler patent, a transverse bar beneath which the spring tongue is passed in inter-engaging the spring tongue with the unitary means, and another transverse bar assisting the unitary means in holding the butt end of the belt flat against the rear of the shield. In the infringing structures as in the Spangler patent the spring tongue assists further in holding the butt end of the belt in position, as does the spring tongue in the Spangler patent, being held down by the transverse bar. As a matter of fact the shoulders formed by producing the kerfs or recesses in the sides of the studs in the infringing structures serve not only an interlocking function, by hook engagement with the spring tongue, but serve also as another short cross bar acting to hold the spring tongue down, such cross bar being connected to the shield through the remaining part of the stud. So if the cross bar be eliminated, the invention still remains embodied, the kerfs also assisting in guiding the tongue to final interlocked position.

The Exhibits “E” and “F” are conceded to be specimens of buckles manufactured and sold by the De-

fendant corporation within the jurisdiction since the date of issuance of the Spangler patent and prior to the filing of this suit. The assumption is that they were continuing to be sold prior to the inhibition of the injunction, as there is no denial of such continued sale, and the Defendant corporation defended the suit. Bliss is conceded to have similarly infringed and defended the suit. [See page 45, Transcript.] They threaten to continue to sell if permitted. And even if they did not, they must be held.

See

Winchester Repeating Arms Co. v. American Buckle Co., 54 Fed., page 711, end of next to last paragraph.

EXPERTS FIND CLOSE IDENTITY.

Now let us see what the several expert witnesses have to say with respect to the similarity or identity of structure and function of the Spangler patented buckle and the infringing structures. As to the cross bars and the equivalent lugs or interrupted cross bars and the spring tongues of the structures we have referred to the testimony of Binckley. The actions of these parts speak for themselves and there must be a spring quality in the tongues. Defendant's expert witness Waterfield refers to the tongues as spring tongues as follows [page 57, Transcript]:

"In both the Spangler patent device and the Complainant's Exhibits 'E' and 'F' there are means projecting inwardly of the flanges and over or behind the *spring tongues* when the parts of the buckle are inter-

locked, and the *spring tongues* and one end of the belts in each instance lie between these bars or ears and the plate or body of the buckle.”

Now as to the hook engagement between the spring tongues of the infringing structures and the recessed studs thereof, referring to pages 41 to 43, Transcript, Binckley testifies:

“This stud of Exhibit ‘E’ which is fast to the rear side of a shield or plate has a cut or notch on each side of it near the edge adapted to engage with the V-shaped perforation in the spring tongue; aside from this I don’t observe any peculiarity in the construction of this stud. The nature of engagement of the stud with the spring tongue in Complainant’s Exhibit ‘E,’ due to the peculiar formation of the stud, might be described as positive; it is a positive engagement as a hook is a positive engagement; this is also a positive engagement. When you compare the method of such engagement with the nature of the engagement of the hook plate ‘10’ in Complainant’s Exhibit ‘A’ and ‘C’ with the tongue ‘15,’ there is certainly no functional difference. I am unable to see any practical difference in the nature of the engagement; both devices depend on the maintenance of a certain amount of tension on the belt to keep the two interlocking parts in engagement; both are released by taking off such tension; *both are positive not depending on friction*. I don’t think it would be improper to say that *both might be described as a hook engagement*. The function of the stud in retaining the end of the belt in its proper relation to the plate or shield is precisely the same in both cases. In the case of Complainant’s Exhibit ‘E’ this stud per-

forms the double function of retaining the end of the belt in the proper relation with the plate or shield and engaging with the spring tongue attached to the other end of the belt. Considering the swinging tongue '10' in Exhibit 'A' as being integral with, or a single piece, the stud '13,' this single piece is the equivalent of the stud attached to the rear of the plate or shield in Exhibit 'E.' The function of the spring tongue is the same in each case as far as I can see.

"I have used the terms 'hook,' 'hook-like' or 'hook engagement' to convey the impression of engagement of two interlocking parts of such a character as to require maintenance of tension on these parts to retain them in their engagement one with the other. I consider this to be the essential characteristic of hook engagement. * * * Considering simply the hook itself with the spring tongue of Exhibits 'A' and 'C' and the grooved lug and spring tongue of Exhibit 'E,' I should say they are mechanically equivalent. There is no difference between the function of the stud of Complainant's Exhibits 'A' and 'C' and the stud of Complainant's Exhibits 'E' and 'F' with respect to holding the free end of the belt to the plate or shield. * * *

"For the complete disengagement of the tongue from the stud and through it the plate or shield, a movement of the tongue longitudinal to the stud is necessary. I would say, however, that where the engagement is complete with the sides of the V-shaped slot bearing into the kerfs on the side of the stud, two movements are necessary to effect disengagement, the same as in other types of hooks, one being *transverse* to the axis of the stud, the other *longitudinal* to its axis; the first

being to disengage the sides of the V-shaped slot from the kerfs, the second to free the tongue from the stud and allow it to be withdrawn. This same movement in effect is necessary for any other style of hook that I have in mind. The classes of relative movements entering into disengagement of the spring tongue from the hook in Complainant's Exhibits 'A' and 'C' and the classes of relative movements entering into disengagement of the spring tongue from the stud in Complainant's Exhibits 'E' and 'F' are the same in each case."

It will be noted that Complainant's expert Binckley finds not only corresponding or coincident functions, but corresponding modes of operation, and corresponding construction or mechanical equivalence. When the mode of operation and functions produced and results obtained are substantially the same, what better test can there be of mechanical equivalence? And it is to be borne in mind that this patent is entitled to a broad range of equivalents as follows from the differentiation hereinabove made over the prior patent art.

Now Defendants' experts (Exhibits "E" and "F" being admitted to be substantially the same) [page 48, Transcript] also admit this substantial identity of mode of operation and result obtained and effects produced as between the stud-and-hook of the Spangler patent and the recessed stud of the infringing structures. Monteverde [page 50, Transcript] testifies:

"Now, these kerfs on the studs of both the above-mentioned exhibits ('E' and 'F') are for the purpose of allowing the stud to slide a little further in the slots, and to keep the tongue from longitudinal movement as to the axis of the stud when in contact with the

sides of the stud when within the kerfs. *They also serve as a safeguard to keep the tongue from slipping longitudinally on the stud. Were these kerfs omitted, the engagement and holding capacity would be just as great in one sense, but not in the other; that is to say, omitting the kerfs the tongue might be subject to longitudinal movement as to the axis of the stud, and therefore more likely to come off the stud accidentally. This would not occur by the use of the kerfs.*"

And again under cross-examination [page 51, Transcript] this witness thoroughly establishes our contention as to this identity of means:

"The use of these kerfs produces a much more effectual and positive interlocking engagement. A button-hole in order to enable the button to be passed through it in either direction must be pliable in most cases. I find no pliability in the tongue of Complainant's Exhibits 'E' and 'F,' which would permit it to materially yield so that the ends of the studs outwardly of the kerfs can be disengaged with the tongues by bending the material. The material is metallic and rigid."

Thus the witness admits that he was wrong when he testified [page 51, Transcript] that the interlocking device operated more as do a button and button-hole in their engagement. This witness also admits [page 55, Transcript] that the hook and stud of the Spangler patent are one and the same part, as is the stud of the infringing structures, each such *unitary structure* performing the two functions so identically common to both the Spangler patent and the infringing structures.

Defendants' expert Waterfield testifies further as to this engagement of the spring tongue of the infringing

structures with the stud and the kerfs thereof [page 55, Transcript]:

“The engagement and holding capacity of the stud in the tongue would be as great were these kerfs omitted as it is with the kerfs, but it would be more liable to slip off the stud longitudinally than if the kerfs were there; provided as a sort of safeguard against accidental disengagement.”

The witness denied there was a hook engagement, but testified on cross-examination as follows, admitting the identity of performance and effect of the stud and kerfs with the stud and hook of Spangler [page 56, Transcript]:

“If the kerfs in Complainant’s Exhibits ‘E’ and ‘F’ were removed there would be a positive interlocking engagement between the tongues and the studs. Such engagement would prevent movement between the tongues and the studs in more than one direction. While it is being worn I should say the friction of the slot on the stud would prevent longitudinal movement of the tongue on the stud. If the tension in the belt were eased up that frictional engagement would hold the parts against slipping unless the tension were very loose. When the kerfs are present it is a much safer engagement, and it positively prevents the tongue from playing or slipping along the stud longitudinally of the stud and becoming disengaged from the stud. *As a matter of fact, I judge the kerfs on the studs in Exhibits ‘E’ and ‘F’ are for the same purpose as the hooked end of the plate 10, in the Spangler patent.*”

Defendants’ expert witnesses do not deny the similarity between the infringing and Spangler buckles as to

the action of the cross bars holding the spring tongues in place, and as to the general features of construction and combination, other than those which have been disposed of, out of their own mouths, by the immediately preceding discussion. In summing up the approximate identity of the infringing and patented buckles Complainant's expert Binckley states [page 43, Transcript]:

"In conclusion I wish to state with respect to the functions and uses of the buckles constituting Complainant's Exhibits 'A' and 'C' and Complainant's Exhibits 'E' and 'F' that there is no functional difference in any of the essential elements of the exhibits."

MECHANICAL EQUIVALENCE ESTABLISHED.

When the patented and infringing structures are found to have corresponding parts producing the same effects and as between the elements of which there are no "functional differences" mechanical equivalence is certainly established, even within a range much more narrow than that to which the Spangler patent is entitled in its construction.

ALL SPANGLER CLAIM ELEMENTS FOUND IN INFRINGING DEVICES.

Now as to the very elements of the claim of the Spangler patent itself, we will proceed to point out wherein Appellants infringe not only the Spangler patent, broadly and fairly construed as it should be, but also infringe the claim of the Spangler patent term for term. We present a comparative table of these elements as follows:

Spangler Patent.

1 & 2. A shield or plate provided with a rearwardly disposed bar spaced therefrom.

3. Holding means for connecting the shield or plate with a strap or other device.

4. Of two interlocking elements, one being connected with said shield or plate rearwardly thereof.

5. Holding means for connecting the other of said interlocking elements with a strap or other device.

6. The other of said interlocking elements.

Exhibits "E" and "F" and Bliss Patent.

1 & 2. The same box-like shield and cross bars or lugs in E and F, and parts 1, 4, 5 and 6 of Bliss patent.

3. Studs of E and F and stud 7 of Bliss patent.

4. Stud with kerfs of E and F and stud 7 with recesses or kerfs of Bliss patent.

5. Rivets or equivalent holding means for connecting the free end of the belt with the spring tongues in E and F, and rivets 11 of Bliss patent.

6. Spring tongues in E and F and spring tongue or plate 9 of Bliss patent.

The claim of the Spangler patent has previously been applied specifically to the Spangler patent specification and drawing. As to the remaining portion of the Spangler claim, the adaptation of the spring tongue to be passed between the shield and bar, such spring tongue being provided with an opening, and the first of said interlocking elements being formed

for hook engagement with said spring tongue through said opening, these features have been fully pointed out to exist, and established to exist, in the preceding pages, in both the Spangler patented buckle and the infringing buckles.

And as we have above pointed out that there is in the infringing structures element for element all of the essential and detail parts and features of the Spangler patented buckle as provided for in the disclosure of the Spangler patent, and as each and every element of the Spangler claim finds its counterpart, in terms, in the construction and mode of operation of the infringing structures, to what further extent could it be suggested that Appellee make out a case of infringement? The patent is entitled to a broad interpretation; but, even if construed narrowly, Appellants cannot escape. They are withheld from such escape by a fair comparison, and out of the mouths of their own expert witnesses.

CHANGE OF FORM, ONLY, MADE BY APPELLANTS.

If there be any material contention that any of the functions of the Spangler patent are performed in the infringing structures by a less elaborate or more simple organization (and it cannot be seen that this contention can be validly made; and can only be weakly recognized, if at all, with respect to the stud and kerfs of the infringing structures which are the counterpart of the stud 13 and hooked plate 10 of the Spangler patent), such attempted differentiation cannot avoid infringement. The decision in

Nathan *et al.* v. Howard, 143 Fed. 889,
is directly in point. In that decision, page 893, it is
said:

“Neither the joinder of two elements into one integral
part accomplishing the purpose of both and no more,
nor the separation of one integral part into two, to-
gether doing precisely or substantially what was done
by the single element, will evade a charge of infringe-
ment.

Bundy Mfg. Co. v. Detroit Time Register Co.,
94 Fed. 524, 538, 36 C. C. A. 375;
Dowagiac Mfg. Co. v. Brennen, 127 Fed. 150,
62 C. C. A. 257.

“This principle is even more applicable when the
change made relates to mere matter of form not of
the essence of the invention.”

The law so laid down could have not been a more
apt pronouncement had it been made by the trial judge
in this case. The only change made by Defendants
is one of form not of the essence of the invention.
Even the box-like shield body is appropriated from the
Spangler disclosure, and the whole external appear-
ance as to form is identical, this form-resemblance
running likewise throughout the whole buckle organi-
zation.

This imitation of arrangement and appearance of
parts is an aggravation of infringement. See

Ludwigs v. Payson Mfg. Co., 206 Fed. 60,
et seq. (decided April 15, 1913).

That part of the opinion appearing in the second and third paragraphs on page 65 is particularly pertinent, and a long list of authorities appears in support of this doctrine. Here *compactness* and *ornamental form* were factors, as in this case.

On page 12 of Appellants' brief it is stated that counsel for Appellee loudly declaimed over the iniquity of Defendant Bliss acquiring the information that led to his making the buckle, for which the Patent Office granted him a patent, from the Spangler buckle. We wish to declaim a little further in the same voice and on the same issue.

IV.

BLISS TAUGHT BY SPANGLER AND THEN TAUGHT BUCKLE Co.

The stipulation of April 15, 1913, appearing on pages 90 and 91 of the Transcript, admits that the Defendant Walter B. Bliss is the patentee Walter B. Bliss of the Bliss patent above referred to and appearing at pages 86 to 89 of the Transcript, and that said Letters Patent are owned by the Defendant corporation and were by it owned at the times that the infringing buckles were made and sold by the Defendant corporation, as admitted on the record in the stipulation above referred to. This stipulation also admits that Bliss has been in the employ of or by contract related with or a stockholder in the Defendant corporation, in connection with making and selling such buckles since the issuance of the Spangler patent. We have traced the practical identity of the infringing

buckles with the disclosures of the Bliss patent; and by this stipulation last referred to Bliss is shown to have been in the camp of the Defendant corporation and to have turned over his patent to that corporation. The infringing product of the Defendant corporation therefore follows the teaching of the Bliss patent amplified by such further teaching and coaching as Bliss, an employee or associate of the Defendant corporation, could give. Now where did Bliss get his teaching which resulted in the issuance of the Bliss patent for the slight modifications of the specific structure, with respect to the Spangler patent, which are disclosed therein as above described? Turning to the Transcript, pages 29 and 30, Spangler testifies as follows:

“I first met Mr. Bliss between the 20th and 27th of April, 1910. I went up to Mr. Bliss to have him manufacture some buckles for me. * * * I had him make twenty buckles constructed the same as Complainant's Exhibit “C” [like the Spangler patent disclosure], except in reference to width, one size being a little wider than the other and some little difference in finish and decoration. I paid for the buckles. I met Mr. Bliss frequently after that. We had many discussions and conversations pertaining to the manufacture of these buckles. He was very much impressed with this buckle Exhibit “C.” He says, ‘A fine thing; I could sell those like hot cakes; college boys will be crazy for that.’ Another time he says that we have been working for years trying to get up a buckle, but that is the finest thing I ever saw.

Then after a certain length of time he said he had a similar idea. *I showed him my patent application on it and from that time on Mr. Bliss was very different, didn't work cheerfully helping me with the buckle from that time on.* He says, 'You mean to tell me you can get a patent on that?' I says, 'I certainly applied for a patent on that.' He never mentioned the fact that he had ever seen anything similar at all.

"Mr. Walter B. Bliss made something over seventy buckles for me in all, I guess. About November 1st, 1910 [after the issuance of the Spangler patent], he notified me he couldn't make any more for me, but he did make some more by having them ordered through Mr. Ross. He made some of these buckles after the issuance of the patent in suit." [Page 31, Transcript.]

And it is to be remembered that the Defendant Bliss never took the stand to dispute this testimony, to explain it, nor in any way to explain any of his relations with Spangler or with the Defendant corporation or with these buckles in their exploitation.

The witness Gilbert testifies as to this Spangler-Bliss relation [pages 33 to 35, Transcript]:

"I know the defendant Walter B. Bliss. I first met him about five years ago. The first time that I went up to Mr. Bliss was to get him to make that shell buckle that Mr. Spangler and I got up together.
* * * That was before I saw Exhibit 'C.' Right after that Mr. Spangler showed me a buckle like Complainant's Exhibit 'C' and asked me if I thought it would sell and I said it certainly was very nice. Mr. Spangler had Mr. Bliss make the first ones for him. I got Mr. Bliss to make up samples for Mr. Spangler.

Mr. Bliss seemed to think the buckles like Complainant's Exhibit 'C' were very nice. I remember talking the buckle over with him and he seemed to think it very nice; in fact, being interested in it I would naturally ask him what he thought about it. He said it was very nice. He afterwards told me he had got out a buckle like that before. He said he had one like that himself. *This was long after the buckle had been on the market.* I should say about three months. *At that time he did not have such buckle, but a little while afterward he did.* The buckle that Mr. Bliss showed me at the time referred to is like this one, but this is somewhat perfected. (Here the witness picks up Complainant's Exhibit 'E.') * * * Mr. Bliss told me he was going to put them on the market. At one time he wondered whether it infringed or not; of course I didn't know anything about it. I said of course Mr. Spangler is the originator of that particular patent. Then he wondered what he could buy Spangler's patent for, so I went to him and asked him about it, asked him what he would do. Nothing was said for some little time. He said something about selling it out to a company. I said that was rather an unfair thing to do; he ought to work Spangler's patent in with his in the company. He said that if I didn't say anything about it till after he got a company and then he would work in Mr. Spangler's patent. After the time Mr. Bliss first showed me the buckle which you have compared with Complainant's Exhibit 'E' he did not say anything more only he was wondering whether it infringed or not—after he made up quite a few of these buckles

he asked me if I thought I would buy belts from Spangler to help put his buckles on the market.”

BLISS CANNOT CONTEST BROAD CONSTRUCTION OF
SPANGLER PATENT HAVING TAKEN TEACHING OF
ITS INVENTION.

There is in evidence the receipted bill paid Bliss by Spangler for the making of the buckles referred to.

This evidence all shows that Bliss was very much impressed with the Spangler buckle invention and admitted that it was the finest thing he ever saw. It was not until some time after that Bliss said he had a similar idea. He filed his application for the Bliss patent six months, lacking a day, after the Spangler patent was issued. *A year prior to filing his application he had before him the Spangler buckle and had worked upon it and received pay from Spangler for this work.* It wasn't until after the Spangler buckle had been on the market three months that Bliss announced that he had a buckle like it himself. Bliss had made at least twenty of these Spangler buckles before he admitted he had a similar idea. After he found that Spangler had applied for a patent Bliss didn't work as cheerfully. Of course not—he didn't like the impending monopoly in Spangler's favor after he had been working for years trying to get up such a buckle. All of this record proves that Spangler, who put his buckles on the market in June, 1910 [page 28, Transcript], and for whom Bliss made the first of these buckles, was the teacher in this buckle art, and Bliss the pupil. The Bliss patent shows that this teaching was effective. All that Bliss could do was

to make some slight alterations in form, for which the Patent Office generously gave him a very specific patent. Later on, the Defendant corporation became the scholar, and Bliss the teacher, but Bliss was only the disciple of Spangler. The Defendant corporation stands in the shoes of Bliss in this matter, having full and complete notice of the prior Spangler invention. As pretty a piece of piracy has scarcely ever been made out in patent infringement. And we must remember, as above, that although Bliss obtained a patent, this did not give him the right to use but merely to exclude others from use. It is eminently proper that Bliss and the corporation be excluded from the use of the master invention of Spangler which necessarily enters into the manufacture, use or sale of the Bliss patented buckle and the admitted infringing buckles Exhibits "E" and "F." Throughout this whole drama there is but one motif, and that is the Spangler invention. Spangler taught Bliss; and Bliss, who made the first buckles for Spangler, thereafter taught the Defendant corporation. Not only therefore did the Defendant corporation have complete and actual notice of the Spangler patent, as required by law, but the message of the Spangler invention with Bliss as the expounder was in the workshop of the Defendant corporation after the Spangler patent issued.

V.

CONCLUSION.

In conclusion we wish to make reference again to the law as laid down by this Court in *Stebler v. River-*

side Heights Orange Growers' Ass'n., *et al.* (*supra*), decided June 12, 1913, which clearly defines the rights of the Appellee Spangler (page 740) as to the range of equivalents to which his invention is entitled; and also on the insufficiencies of anticipation (page 738), (which insufficiencies, as in that case, are found in the case now at bar). Quoting further from that decision, and from the decision in Cimiotti Unhairing Co. v. American Unhairing Mach. Co., 115 Fed. 498. 504, 53 C. C. A. 230, 236:

"The mere fact that there is an addition, or the mere fact that there is an omission, does not enable you to take the *substance* of the plaintiff's patent. The question is, not whether the addition is material, or whether the omission is material, *but whether what has been taken is the substance of the invention.*"

Nothing material has been omitted by the Defendants from, or added by the Defendants to, the gist and kernel and substance of the Spangler invention. What has been taken is the very *substance of the invention*. In addition to this substance, the very dress and appearance have been followed, aggravating the infringement.

The fact that a patent issued to Bliss does not raise any presumption against infringement. In *Stebler v. Riverside Heights Orange Growers' Ass'n and Parker* (*supra*), *Parker*, the decision shows, had a patent and its subject infringed the patent in suit. (And see *Hermann v. Youngstown Car Mfg. Co.*, *supra*.)

The grounds of anticipation urged against the Spangler patent are about as germane to the invention

as the letters of the alphabet are to a literary composition, as an anticipation of or suggestion of the import and meaning and essence of the same. There is a query which naturally presents itself, in view of the respect paid by Appellants to the prior art—that is, why did they not manufacture the Graves buckle or the Koopman buckle or the Busch buckle or the Goldsmith buckle or the Latta buckle? The patent on each one of these buckles has expired. No, the market never had the right buckle until Spangler offered it. We contend that Spangler alone is entitled to supply the demand.

The facts above presented, taken together with the remainder of the record in the case, and the law as it stands today pertinent to such record and facts, and the unavoidable conclusions to be drawn from the record and such facts, are all respectfully submitted with confident solicitation that the decree of the lower Court be not reversed, but rather be affirmed in each and every respect.

Respectfully submitted,

RAYMOND IVES BLAKESLEE,
Solicitor and Counsel for Appellee.

No. 2370.

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Walter B. Bliss and Fresno Mono-
gram Adjustable Buckle Com-
pany, a corporation,

Appellants,

vs.

George P. Spangler,

Appellee.

APPELLANTS' REPLY BRIEF.

Counsel for appellee claims that there is infringement in the buckle of the Bliss patent and in buckles Exhibits E and F on the ground of identity of structure and function. He quotes his expert Binckley's testimony to show identity of function and undertakes to bring into the case an element not found in the claim, to-wit, "holding the butt end of the belt to and rearwardly of the shield and flat against it." (P. 25.) The cross bar b of Busch does the same thing.

The identity of structure can not be established by results alone. Walker states that there are two tests of equivalency: 1. Identity of function. 2. Substantial identity of way of performing that function.

See, 362 Walker on Patents, 4th Ed., p. 312.

That there is neither identity of structure or in function between the cross bar 8 of Spangler's patent and the cross bar of Exhibit E and the lugs of Exhibit F, which Binckley testifies are the equivalent of bar 8, seems to us most clear. The bar of E and lugs of F simply guide the tongue into engagement with the stud. Remove the bar of E and lugs of F and the buckle holds the ends of the belt connected as well as before. Remove bar 8 and Spangler's buckle will not work at all. On page 27, Record, Spangler says:

"If the transverse bar (bar 8) were omitted it wouldn't work at all; the parts would work loose."

As we can remove this bar and these lugs and our buckle will work equally well without them, this testimony of Binckley and the claim of equivalency as to these parts is refuted.

The stud on the back of the shield in Exhibits E and F is not the equivalent of the stud of Spangler's buckle. The arrangement of parts is different. The construction is different in this: the studs of E and F have kerfs; Spangler's stud has none. Spangler's stud simply holds one end of the belt connected to one of his interlocking elements, to-wit, the swinging tongue. The stud of E and F hold one end of the belt to the shield and forms one of the interlocking elements. The kerfs of the stud hold the tongue against longitudinal movement along the axis of the stud until the slot in the tongue reaches a point where it is as wide as the diameter of the stud. Without the kerfs there is as much holding power to keep the ends of the belt together. The functions of the two studs and their connection

to different parts show that one is not the equivalent of the other.

The kerfs of the stud of Exhibits E and F are not the equivalent of the hook on the end of Spangler's swinging tongue. Take that hook off and there is nothing to connect the parts. Take the kerfs out and the parts will hold equally well, but the danger of accidental separation is greater.

There is absolutely no equivalent in E and F for the cross bar on which Spangler's swinging tongue is mounted, nor is there any equivalent for such swinging tongue.

In *Seymour v. Osborne*, 11 Wall. 678, 20 L. C. P., at page 42 L. C. P. the court says:

"Actual inventors of a combination of two or more ingredients in a machine, secured by letters patent in due form, are entitled, even though the ingredients are old, if the combination produces new and useful results, to treat every one as an infringer who makes and uses or vends the machine without their authority. (Authorities.)

They cannot, however, suppress subsequent improvements which are substantially different, whether the new improvements consist in a new combination of the same ingredients, or of the substitution of some newly discovered ingredient, or some old one performing some new function not known at the date of the patent as a proper substitute for the ingredient withdrawn from the combination constituting their invention."

In *American Can Co. v. McGuiness*, 156 Fed. 184, the court says:

“Where a patent is not a pioneer invention, but for a combination of old elements, the range of equivalents is restricted to those which perform the same function in the same way.”

This case was affirmed, 162 Fed. 1006.

The swinging tongue with the hook on the end thereof and the cross bar on which it is mounted are all left out of Exhibits E and F and nothing substituted therefor. Spangler's tongue on the end of the belt has a transverse slot. The tongue of Exhibits E and F and of the Bliss patent has a tapered longitudinal slot. This last tongue will not work in the Spangler structure and Spangler's tongue will not work in the other structures, hence the tongues are not equivalent. As stated in our opening brief Bliss and the Buckle Co. did not use anything that Spangler taught. Hence it was not necessary to rebut any testimony about Bliss' knowledge of the Spangler buckle.

Infringement is a tort. The law presumes innocence. Neither an employee of, a stockholder in, or an officer of a corporation is liable to an action for infringement for an act done by the corporation in which he did not participate.

Folwell v. Miller, 145 Fed. 495.

For the reasons above stated and those stated in our opening brief the judgment of the lower court should be reversed.

G. E. HARPHAM,
Solicitor for Appellants.

No. 2370.

UNITED STATES
CIRCUIT COURT OF APPEALS

For the Ninth Circuit.

WALTER B. BLISS and FRESNO MONO-
GRAM ADJUSTABLE BUCKLE COMPANY,
a corporation,

Appellants,

VS.

GEORGE P. SPANGLER,

Appellee.

APPELLEE'S BRIEF IN REPLY TO
APPELLANTS' REPLY BRIEF.

On permission given at the time of argument,
this reply brief is filed.

Appellee's brief will be found to dispose, generally, of all the ninth-hour labors of Appellants reflected in their fragmentary reply brief.

But there are a few features of the case which the points raised in this Appellants' reply brief particularly set out in the front for final disposition.

First, Appellants again refer to the prior art, by

which, and by only which, they seek to attack a fair and warrantably liberal interpretation of Appellee's patent and the claim thereof. This prior art, *purely paper prior art*, does not contain a single structure anticipatory of Appellee's invention. On the argument Appellants relied largely upon the Busch patent (page 64, Transcript) and the Graves Patent (page 71, Transcript). These patented devices might only "by process of modification, reorganization or combination/ be made to accomplish the function performed by the device of the patent." The quotation is from a decision of this Court in the case referred to on argument (page 19, Appellee's brief.) These prior patented attempts, *no proof of use of any of which is shown in the record*, are disposed of on pages 14 to 18, inclusive, of Appellee's brief. Neither the Busch device nor the Graves device can operate as do Appellee's patented device and the infringing structures of Appellants; and neither *reflects the inventive idea*. Neither is the same thing.

As to the Graves Patent (see particularly last paragraph page 17 and upper portion page 18, Appellee's brief.)

Appellee's patented device and Appellants' infringing structures have *the same elements, performing the same functions, in substantially the same manner*. (See pages 24 to 27 and 34 to 36 inclusive, Appellee's brief.) No further test of infringement can be required.

The Appellants only made a change in form. That is an aggravation of infringement (pages 36 to 38, Appellee's brief.)

The Appellants as stated at the argument attempted to circumvent the inhibition of the decree, and left off the transverse bar or equivalent lugs beneath which, in Complainant's exhibits "E" and "F" the spring tongue is passed. As the kerfs on the stud produce shoulders *acting to guide the spring tongue into place and to hold it down and to the butt end of the belt*, as well as acting to produce a hook engagement between the stud and the slotted spring tongue, the Special Master reviewing the original record, on reference, and on further proofs, found that the altered buckle *also infringed the Appellee's patent*; and the Judge of the Trial Court, on exceptions argued, confirmed the Special Master's report so finding. This is res adjudicata as well as the issues specifically covered in the Transcript, and this finding is clearly supported by

Nathan et al. v. Howard, 143 Fed. 889, 893, quoted from at page 37, Appellee's brief.

In effect therefore, the Appellants *doubly* infringe by using the transverse bar or lugs as well as the stud with the kerfs for performing the functions mentioned. (See page 27, Appellee's brief.)

In "E" and "F" other lugs are provided for aiding in holding the belt against the shield, in lieu of the

pin or bar 9 of the Spangler patent. Stud and kerfs take the place of Spangler's hooked studded tongue. The spring tongues of E and F and of the Spangler patent are all slotted and have hook engagement with the *unitary* means carried by the shield and holding the two ends of the belt together and one of them flat against the back of the shield *in compact, neat and unobtrusive arrangement and in a box-like containing shield-structure*. Slight differences in spring tongue and slot design and hook design, and other features of design, are only attempted evasions of the patent in suit.

The invention is appropriated. As to this and the proper interpretation of the patent in suit, see *Stebler v. Riverside Heights Orange Growers Assn., et al.*, the decision of this Court above referred to, and as discussed on pages 43 to 45, Appellee's brief.

This appeal is from an interlocutory decree granting an injunction. No distinction can be made as between any of the Appellants on this head. *Any* act of infringement by them or either of them, of any nature, comes within the decree, at least as far as the injunction is concerned. Spangler and Gilbert proved that Appellant Bliss was taught by Spangler, and he taught the Appellant Buckle Company and worked with it.

The Appellants have pirated and by corporate oppression have practically ruined the business of the Appellee, a man of meagre means and limited busi-

ness equipment and who cannot hope for further capital while his proper field is wrongfully invaded. See pages 30 and 31, Transcript.

It is submitted that for the further reasons above advanced the decree of the Trial Court should, as solicited in Appellee's opening brief, be affirmed in each and every respect.

Respectfully submitted,

RAYMOND IVES BLAKESLEE,
Solicitor and Counsel for Appellee.

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Walter B. Bliss and Fresno Mono-
gram Adjustable Buckle Co., a
corporation,

Appellants,

vs.

George P. Spangler.

PETITION FOR REHEARING.

*To the Honorable the Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:*

The appellants respectfully petition for a rehearing of the above entitled cause on the following grounds:

1. That in the decision heretofore rendered by Your Honors you overlooked the fact that an infringement is a tort, and the evidence must establish the fact of the commission of such tort, and that a presumption of innocence pertains to the acts of the defendants which must be overcome by proof.

As the bill charges a joint tort of all three defendants the proof that there was a joint tort of two of

the defendants does not support the allegations of the bill or the decree of the court. The stipulation that Bliss made one or more buckles subsequent to the issuance of the Spangler patent does not establish that he did it in connection with the other defendants as a joint act, nor entitle the issuance of a writ of injunction against him. The other defendant, the Buckle Company, is not responsible for his sole act.

That he was connected with the Buckle Company as an employee does not establish any responsibility for the manufacture.

Walker on Patents says in Sec. 403, Fourth Edition:

“A mechanic who, when working for wages, makes or uses a patented thing at the command of his employers, is not liable to an action at law on that account. A decree for an accounting of profits would not be proper in such case because a mechanic cannot be said to make any profits from such infringement.”

Bliss is presumed to be innocent of any tort until the contrary is shown. The innocent construction of the stipulation is that what he did was as an employee of the Buckle Company, and as such employee he is not liable for damages, nor did he make any profits from the doing of the act.

Neither the stipulation nor testimony connect Bliss or the Buckle Company with any joint act of all three defendants.

Therefore the proofs do not support a joint decree against all three defendants, and the pleadings do not admit of any but a joint decree.

2. In deciding that defendants' buckle employs all the elements of plaintiff's patent in all essential and material particulars in practically the same way Your Honors must have overlooked this important fact. That in defendants' buckle one essential and important element of the Spangler buckle, to-wit, a swinging tongue with a hook on the end thereof has been omitted from defendants' buckle.

Another essential difference between Spangler's buckle and defendants' buckle lies in the fact that in the Spangler buckle the cross bar under which the Spring tongue must be passed is an essential element and that his buckle will not work without it. (Spangler's testimony, last paragraph, page 27.) This bar is bar 8 of Spangler's patent.

The parts of defendants' buckle which Binckley, plaintiff's expert, says are the mechanical equivalents of bar 8 are the lugs under which the ends of defendants' buckle tongue is passed when the tongue is engaged with the stud. These lugs are not essential to the operation of defendants' buckle. Counsel demonstrated by a model in open court that they were not necessary in defendants' buckle, hence they do not perform the same function as Spangler's cross bar, and this shows that another essential element of the Spangler buckle is wanting in defendants' buckle.

In the decision of Your Honors you state that "the interlocking devices in plaintiff's patent consist "of a hook on the swinging tongue which engages a "slot on the spring tongue.

“In the Bliss patent the devices consist of a stud
“attached to the shield underneath with kerfs or a
“head and a plate attached to the loose end of the belt
“containing a slot of different shape. That one of
“these engaging devices is a hook and the other a pin
“or stud and one a slot extending cross-wise of the
“spring tongue and the other a converging slot ex-
“tending longitudinally with the plate or tongue it
“seems to us can make no material mechanical differ-
“ence in the engagement. They perform the same
“function for all practical purposes in practically the
“same way.” (Page 10 and 11, opinion.)

Now right here is where Your Honors are in error. In addition to the hook and spring tongue of Spangler’s buckle, to make the fastening secure between the parts requires the cross bar 8 under which the spring tongue slips, and which is made an element of the claim. In the Bliss buckle no such bar is necessary to hold the parts from separating while in use. . The lugs of defendants’ buckle, which are situate in the same position as cross bar 8, are simply guides to quickly position the tongue so the slot therein will pass over the stud. It is the fact that in defendants’ buckle the stud is on the back of the shield and not on the face of a swinging tongue that enables a positive engagement between the parts without the use of the cross bar as a part of the holding elements.

Your Honors concede that all the elements of Spangler are old except the hook on the end of the swinging tongue and the cross bar under which it passes and which keeps the stud on the swinging

tongue from separating from the end of the belt. In defendants' buckle all the parts are old except the kerfs in the stud and the V-shaped slot in the tongue.

From the art of record Spangler did not do anything that had not been done before. He was simply an improver. He did the same thing, say, in a better manner, but he did it by the arrangement of his parts in a particular manner. He did not invent the box-like shield, or if he did he gave it to the public and the Buckle Company had a perfect right to use it.

The Bliss buckle is an arrangement of parts which effect the same result as the Spangler buckle, but that result is, in part, brought about by different old elements arranged in a different way from Spangler's elements and with fewer parts.

In *Miller v. Eagle Manufacturing Co.*, 151 U. S. 304, 38 L. C. P. at p. 131, the Supreme Court says:

"Tested by this rule and in view of the prior devices and the great variety of springs in use previous to the granting of his patent, Wright cannot be treated as a pioneer in the art. Neither can he, nor his assignee, be allowed to invoke the doctrine of equivalents, such as the courts extend to primary inventions, so as to include all forms of spring devices and adjustments which operate to perform the same function, or accomplish the same result. * * * The specific device described in and covered by the Wright patent could not be used in the appellants' combination, nor the appellants' spring in the appellee's combination. This interchangeability, or non-interchangeability, is an im-

portant test in determining the question of infringement.” *Prouty v. Ruggles*, 41 U. S., 16 Pet. 336 (10.985); *Brooks v. Fiske*, 56 U. S., 15 How. 212 (14.665); *Eames v. Godfrey*, 68 U. S., 1 Wall. 78 (17.547).

Spangler’s spring tongue would not work in defendants’ buckle, nor would the tongue of defendants’ buckle work in the Spangler buckle.

It is thus apparent that the two devices are not mechanical equivalents.

In affirming the judgment of the lower court Your Honors have overlooked the principle of patent law established by a long line of decisions and set forth in *Wayne Mfg. Co. v. Benbow-Brammer Mfg. Co.*, 168 Fed., at page 276, as follows:

“And where an art is crowded and so old that no pioneer patent exists therein, and many inventors have conceived and made machines, combinations, and improvements in it which accomplish the desideratum with varying degrees of success, each is entitled to his own machine or combination or improvement, so long as it differs from those of his competitors and does not include theirs.” *Railway Co. v. Sayles*, 97 U. S. 554, 556, 24 L. Ed. 1053; *McCormick v. Talcott*, 20 How. 402, 405, 15 L. Ed. 930; *Stirrat v. Excelsior Mfg. Co.*, 10 C. C. A. 216, 217, 61 Fed. 980-81; *National Hollow Brick Beam Company v. Interchangeable Brake Beam Company*, 45 C. C. A. 544, 563, 106 Fed. 693, 712.

Analyzed again: In the Spangler buckle, to make a positive and reliable engagement between the ends of the belt there must be: 1, a shield; 2, a cross bar on the back thereof; 3, a swinging tongue with a hook on the end; 4, a stud on the face of this tongue; 5, a spring tongue with a slot. In defendants' buckle there must be: 1, a shield; 2, a stud on the back having kerfs in the sides near the end; and 3, a tongue with a slot. These parts are all differently arranged, and while they accomplish the same results, they do it by a different arrangement of old elements, which all the authorities decide is patentable, and we respectfully submit that it avoids infringement.

For these and other reasons which could be urged a rehearing should be granted.

G. E. HARPHAM,
Solicitor for Appellants.

I, G. E. Harpham, do hereby certify that in my judgment the foregoing petition for rehearing is well founded and that it is not interposed for delay.

G. E. HARPHAM,
Counsel for Appellants.

